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To Get Rich Is Precarious: Regulation Of Private Enterprise In the People's Republic Of China

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INTRODUCTION

Some nine or ten years ago, capitalist businesses — private, profit-seeking enterprises with large numbers of employees and potentially unlimited assets — reappeared in the People's Republic of China (the PRC or China). For years, these private enterprises (*siying* or *siren qiye*) operated without formal recognition or even exact definition, until the amendment of the PRC Constitution¹ and the adoption of new legislation in 1988 legitimized the private economy and defined its status. With constitutional recognition and official backing, the private sector's position seemed secure and its rapid growth likely to continue, at least during the "primary stage of socialism."² In fact, however, its position was precarious, as events since June 4, 1989 have demonstrated. Already affected by the government's austerity measures, private business proved an easy target for official attacks. Only

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1. ZHONGHUA RENMIN GONGHEGUO XIANFA (Constitution of the PRC) (adopted Dec. 4, 1982, amended on Apr. 12, 1988) 1979-84 ZHONGHUA RENMIN GONGHEGUO FALU JI YOUGUAN FAGUI HUIBIAN (Collection of Laws and Related Regulations of the PRC 1979-84) 1 (Law Press, 1986) [hereinafter the 1982 CONST.].

2. See *infra* notes 66-71 and accompanying text.

recently are there indications that private enterprise may be returning to favor.

Although the PRC economic reforms have now been overtaken by radical reforms in the Soviet Union and Eastern Europe,³ the early Chinese encouragement of private enterprise was for its time a striking departure from socialist norms, and the private sector continues to be of great importance to China's economic future. Although in some respects its development has been unique, in others the history of the private sector has typified the recent course of economic reform in the PRC. The purpose of this article is therefore to examine the recent rise, fall from grace and apparent comeback of private enterprise in the PRC, and to analyze the legislation and policy now regulating the private sector, with a view to understanding its current status and future role in China.

A broad treatment of all "private" business in the PRC might also have included discussion of individual household businesses (*getihu*) and even collective enterprises (*jiti qiye*), both of which are sometimes referred to as "private" in the Western press.⁴ PRC commentators themselves recognize that both individual and private firms are based on *siyouzhi*, or private ownership, and so share certain economic

3. In March 1990, the Soviet Union adopted legislation on property ownership that would (for the first time since the 1920s) permit private entrepreneurs to own and operate small businesses and factories and to hire their own workers. Parks, *Soviets Break With the Past, OK Small Private Firms*, L.A. Times, Mar. 7, 1990, at 1. The measures contained in the "500 Days" economic plan would have introduced even more radical change to the Soviet Union's centralized socialist economy. Dobbs, "500 Days," *a Soviet Plan for Capitalism*, Int'l Herald Tribune, Sept. 15-16, 1990, at 4; *Defying Gorbachev, Russia Shifts Gears*, Int'l Herald Tribune, Nov. 2, 1990, at 1. In April 1990, the Czechoslovak parliament adopted legislation allowing private enterprise and capital investment. *Prague Legalizes Private Enterprise*, Int'l Herald Tribune, Apr. 20, 1990, at 2.

4. The 1982 Constitution, while declaring in art. 6 that the basis of the "socialist economic system" of the PRC is the "socialist public ownership of the means of production," now recognizes (in arts. 7, 8 and 11) four forms of ownership: state, collective, private and individual. As a consequence, there are now basically four types of enterprise in China, classified according to the type of ownership. State enterprises (*guoying qiye*), comprising the dominant sector of the economy, are those whose assets are owned by the state (or, in current usage, by "the whole people"). Collective enterprises (*jiti qiye*) are operated by groups of individuals, usually workers or peasants in collectives; their assets are owned collectively and not by the individual members. For additional discussion of the types of ownership in China, including private ownership, see Chao & Yang, *Private Enterprise in China: The Developing Law of Collective Enterprises*, 19 INT'L LAW. 1215 (1985); Tang & Ma, *Evolution of Urban Collective Enterprises in China*, 104 CHINA Q. 614 (1985). Individual industrial/commercial households (*geti gongshanghu* or *getihu*) are small businesses owned by one person or family and employing no more than seven other persons. Regulations *infra* note 78. See also Epstein & Ye, *Individual Enterprise in Contemporary Urban China: A Legal Analysis of Status and Regulation*, 21 INT'L LAW. 397 (1987).

characteristics. In structure and operation some of the newer collective enterprises also closely resemble private businesses, and some are actually private firms that have registered as collectives for reasons of protective coloration.

But from the Chinese theoretical viewpoint private enterprises constitute distinct entities, they have their own history and consequently they are now governed by separate legislation. In addition, since private firms are neither socialist in principle (like collectives) nor necessarily small-scale (like individual households), their very existence presents greater ideological difficulties for the socialist theorist. This article, therefore, will focus on private enterprise in the more limited sense, as it is now defined in Chinese legislation: a profit-seeking economic organization that employs eight or more persons and whose property is privately owned.

I. DEVELOPMENT OF THE PRIVATE ECONOMY

A. *Status Before 1978*

When the PRC was founded in 1949, the new government did not immediately move to shut down the variety of existing private businesses in China. Nor have the authorities pursued a consistent policy towards the private sector; official policy towards private business of all types has fluctuated over the last forty years. According to one official view, the history of private business in China can be divided into four stages: 1949-56, 1957-65, 1966-78 and 1978 to the present.⁵ During the first stage, private business was initially tolerated. It was formally recognized by the PRC's provisional constitution, the Common Program,⁶ which provided that the government would "encourage the active operation of all private economic enterprises

5. Speech by Ren Zhonglin, *Guanyu Geti Jingji Wenti* (On the Individual Economy) (Apr. 7, 1987), reprinted in 13 GONGSHANG XINGZHENG GUANLI 16, at 16-17 (1987). Other writers suggest a similar periodization; see e.g., Liang, *Zhongguo Geti Gongshangye de Fazhan* (Development of Individual Industry and Commerce in the PRC), in 1984 ZHONGGUO JINGJI NIANJIAN (1984 Economic Yearbook of China) IV-51. For a detailed analysis of some aspects of private business development in the PRC, see D. SOLINGER, CHINESE BUSINESS UNDER SOCIALISM (1984), particularly ch. 4.

6. Zhongguo Renmin Zhengzhi Xieshang Huiyi Gongtong Gangling (Common Program of the Chinese People's Political Consultative Conference) (adopted Sept. 29, 1949) reprinted in 1949-50 ZHONGYANG RENMIN ZHENGFU FALING HUIBIAN (Collection of Laws of the Central People's Government 1949-50) 17.

beneficial to the national welfare and the people's livelihood."⁷ The individual economy and the private capitalist economy were included among those to be coordinated and regulated by the state,⁸ and in 1950 the central government even adopted provisional regulations to govern these private businesses.⁹

In 1953, however, the PRC introduced its first five-year plan, and implementation of the policy of socialist transformation was formally begun. The 1954 Constitution¹⁰ still recognized "ownership by individual working people" and "capitalist ownership,"¹¹ and it further declared that the state would protect "the right of capitalists to own means of production and other capital according to law."¹² But its preamble had also declared that one of the general tasks of the state was to "accomplish the socialist transformation of agriculture, handicrafts, and capitalist industry and commerce." Moreover, the 1954 Constitution provided that state policy towards capitalist businesses was "to use, restrict and transform them" and made clear that the state would "gradually replace capitalist ownership with ownership by the whole people."¹³ As a result of that policy, ninety-nine percent of private businesses had reportedly been converted into joint state-private enterprises by 1956,¹⁴ and the capitalist economy in the traditional sense had been eliminated from the PRC. At the same time, the individual economy (of individual handicraftsmen and artisans), though still recognized by the 1954 Constitution,¹⁵ "had been advanced along the cooperative and collective road."¹⁶ By the end of the first stage, then, the PRC "had basically been transformed into a socialist system

7. *Id.* art. 31.

8. *Id.* art. 26.

9. *Siyang Qiye Zhanxing Tiaoli* (Provisional Regulations on Private Enterprises) (promulgated Dec. 30, 1950) [hereinafter the 1950 Regulations]; *Siyang Qiye Zhanxing Tiaoli Shixing Banfa* (Implementing Measures for the Provisional Regulations on Private Enterprises) (promulgated Mar. 3, 1953) reprinted in *ZHONGYANG CAIJING ZHENGCE FALING HUIBIAN* (Collection of Central Laws and Decrees on Financial and Economic Policy) 141, 148. I am grateful to Ye Lin for providing me with the text of these regulations.

10. *ZHONGHUA RENMIN GONGHEGUO XIANFA* (Constitution of the PRC) (adopted Sept. 20, 1954) 1954.9 - 1955.6 *ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN* (1954 Collection of Laws and Regulations of the PRC) 4 [hereinafter the 1954 CONST.].

11. *Id.* art. 5.

12. *Id.* art. 10.

13. *Id.* art. 10.

14. J. HAZARD, *COMMUNISTS AND THEIR LAW* 179 (1969).

15. 1954 CONST., *supra* note 10, art. 9.

16. Xiao, *Yunxu Siren Jingji Shidang Fazhan, Youli yu Shehuizhuyi Shiye* (Allowing Appropriate Development of the Private Economy Will Benefit Socialism), 32 *ZILIAO YU WENGAO*, Sept. 25, 1986, 5, at 6.

with the means of production publicly owned."¹⁷

During the second stage (lasting from 1957 to 1965), the government relaxed its tight controls over privately-run business and there was consequently some restoration of individual firms, particularly after 1961 and the retreat from Great Leap Forward policies.¹⁸ But during the third stage (1966 — 1978), the remaining individual businesses were stigmatized as "tails of capitalism" and ruthlessly suppressed in successive Cultural Revolution campaigns.¹⁹ The 1975 Constitution²⁰ recognized only socialist ownership. Although it also declared that the state "may allow" non-agricultural individual laborers to "engage in individual labor involving no exploitation of others," even they were to be "guided onto the road to socialist collectivization."²¹ The 1978 Constitution,²² though enacted after the end of the Cultural Revolution, contained no more liberal provisions.²³ By 1976, therefore, only 180,000 people were reported to be engaged in individual businesses, and by 1978 the number had fallen further to 140,000.²⁴ Private business of all types had been virtually eliminated from the Chinese scene.

B. Developments after 1978: the "New" Private Enterprise

The Third Plenum of the Eleventh Central Committee of the Communist Party, held in December 1978, shifted the PRC's focus to modernization and economic reform.²⁵ That official reversal of policy paved the way for the reappearance of individual and ultimately private capitalist businesses in the PRC. At first, those businesses were small operations owned by one individual or household (and were therefore known as *getihu*). They were primarily engaged in commerce, small-scale handicrafts, food and beverages, service trades, repair work,

17. Ren, *supra* note 5, at 16.

18. Liang, *supra* note 5, at IV-52.

19. Ren, *supra* note 5, at 17.

20. ZHONGHUA RENMIN GONGHEGUO XIANFA (Constitution of the PRC) (adopted Jan. 17, 1975) reprinted in 1 XIANFA ZILIAO XUANBIAN (Collection of Constitutional Law Materials) 293 (1980).

21. *Id.* art. 5.

22. ZHONGHUA RENMIN GONGHEGUO XIANFA (Constitution of the PRC) (adopted Mar. 5, 1978) reprinted in XIANFA ZILIAO XUANBIAN, *supra* note 20, at 303.

23. *Id.* art. 5.

24. Ren, *supra* note 5, at 16-17. According to another source, there were 150,000 individual laborers in 1978. Xiao, *supra* note 16, at 6.

25. M. XUE, CHINA'S SOCIALIST ECONOMY 220 (rev. ed. 1986).

transportation and house repairs.²⁶ Although they were not at the outset permitted to hire outside workers, a series of interim regulations soon allowed them to engage up to two "assistants" and five "apprentices."²⁷ The position of individual business was recognized in Article 11 of the 1982 Constitution, which now referred to the "individual economy" (*geti jingji*) of urban and rural workers and provided for the protection of its lawful interests, and again in 1986 by the General Principles of Civil Law.²⁸

The development of the individual economy was taken one step further with the appearance and rapid growth of what came to be called the *private* economy (*siying jingji*). Private enterprises, which were unofficially defined as those employing at least eight outside workers, developed naturally (and inevitably, according to most writers)²⁹ out of the more successful and expansive individual household businesses. The new private businesses first began to appear around 1981 or 1982, but their growth accelerated after 1983 as a result of the development of the new "commodity economy," with its liberalization of capital, labor and markets.³⁰ The Chinese government did not attempt to suppress these larger firms, but instead adopted a "wait and see" policy that protected their growth and development.³¹

According to official figures, by the end of 1987 there were 225,000 such private enterprises in China, including an estimated

26. See Epstein & Ye, *supra* note 4.

27. For example, Guowuyuan Guanyu Chengzhen Feinongye Geti Jingji Ruogan Zhengcexing Guiding (Certain Policy Provisions Relating to the Non-agricultural Individual Economy in Cities and Townships) art. 5 (promulgated July 7, 1981) *reprinted in* 1981 ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN (1981 Collection of Laws and Regulations of the PRC) 283 (1986); Chengxiang Geti Gongshanghu Guanli Zhanxing Tiaoli (Provisional Regulations for the Administration of Urban and Rural Individual Industrial and Commercial Households) art. 4 (promulgated Aug. 5, 1987) *reprinted in* 1987 ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN (1987 Collection of Laws and Regulations of the PRC) 515 (1988) [hereinafter the Individual Regulations].

28. Zhonghua Renmin Gongheguo Minfa Tongze (General Principles of Civil Law of the PRC) (adopted Apr. 12, 1986) *reprinted in* 1986 ZHONGHUA RENMIN GONGHEGUO FAGUI QUANSHU (1986 Collection of Laws and Regulations of the PRC) 1, at 315 [hereinafter the Civil Law].

29. For example, Ding, *Lun Siying Qiye de Falu Tiaozheng* (On Legal Regulation of Private Enterprises) 1988 ZHONGGUO FAXUE, No. 2, Mar. 1988, at 66; Zhang & Li, *Siren Qiye Guanli Duice Chuyi* (On Regulatory Measures Concerning Private Enterprises), 1987 JINGJI FAZHI, NO. 8, at 8 (1988); Wang & Wang, *Guanyu Siren Qiye de Falu Sikao* (Reflections on Laws Relating to Private Enterprises), 1988 XIANDAI FAXUE, NO. 3, at 31.

30. Han, *Siren Jingji de Fazhan Qushi ji qi Duice* (Trends of Development in the Private Economy and Policies Towards It), 32 ZILIAO YU WENGAO, Sept. 25, 1986, 1, at 2.

31. Y. BAI & J. HUANG, *SIYING QIYE FALU ZHISHI* (Legal Knowledge Concerning Private Enterprises) 8 (1988); Han, *supra* note 30, at 2.

110,000 registered as collective enterprises or cooperatives; altogether they employed 3.67 million people.³² Eighty-two percent of private enterprises were reported to be engaged in industry, handicrafts, transport and communications, and the building industry (as opposed to the smaller individual firms in trade, catering, services and repairing).³³ Besides restaurants, bars and retail stores, private entrepreneurs were operating clinics, banks, pawnshops, a leather factory,³⁴ a chicken-raising operation,³⁵ transport companies, pawn shops³⁶ and even research firms.³⁷ Many of these firms, particularly in the coastal areas like Guangzhou, Shantou and Fuzhou, were also engaged in the export business.³⁸

Eighty-one percent of the private enterprises were reported to be based in the countryside,³⁹ but in some cities like Wenzhou in Zhejiang province and Shishi in Fujian province, private (and individual) enterprises played a particularly important role. In Shishi, private business reportedly constituted the mainstay of the local economy; in 1988 a dozen firms with a total annual output of ten

32. Ren, *Development and Role of the Private Economy*, BEIJING REV., May 8-14, 1989, at 18. These end-of-1987 figures announced by Ren Zhonglin (Director of the State Administration of Industry and Commerce) were still being cited as late as March 1989. The government does not explain how these totals were arrived at; the statistics must be seen as no more than estimates. Ma, *Private Businesses Fear Discrimination*, China Daily, June 25, 1988, at 4; Zhang, *Zhongguo You Shiyiwanyu Shiyong Qiye* (China Has More Than 110,000 Private Enterprises), Renmin Ribao—Haiwai Ban, Oct. 7, 1988, at 1 [hereinafter RMRB—HB]; Chen, *Geti Gongshanghu You Yiqianshibaiwan* (There Are 14 Million Individual Industrial and Commercial Households), Renmin Ribao, Mar. 4, 1989, at 1 [hereinafter RMRB]. Any figures based on the numbers of private enterprises registered would almost certainly understate the true total at any given time, as these official figures try to take into account. The registration of private enterprises as "false collectives" has remained a government concern. Li, *Mingque Shiyong Qiye Falu Diwei Ke Burong Huan* (Clarification of Private Enterprise Legal Status Brooks No Delay), Fazhi Ribao, Dec. 6, 1990, at 1.

33. Ren, *supra* note 32, at 19.

34. *Prosperity Spreads Out From Rural Factories*, China Daily (Business Weekly), July 10, 1989, at 1.

35. *Three Peasants Make Millions in Running Chicken Farms*, Ta Kung Pao (weekly ed.), Nov. 10, 1988, at 4.

36. *Former "Exploiters" Do Roaring Business*, S. China Morning Post, Jan. 5, 1989, at 8.

37. *A Scholar Goes Into Business*, China Daily, Apr. 5, 1989, at 4.

38. Chen, *Getihu he Shiyong Qiye Chukou Chuanghui Chengji Keguan* (Significant Exports and Foreign Currency Earnings by Individual Households and Private Enterprises), RMRB, Feb. 10, 1989, at 1. Guangdong, for example has encouraged its private enterprises to engage in processing on order or according to sample, assembly of imported parts, and compensation trade. *Guangdong Wei Shiyong Qiye Kai Ludeng Guli Gao "Sanlaiyibu" Yewu* (Guangdong Gives Green Light to Private Enterprises, Encouraging "Three Imports and One Supplement" Businesses), RMRB — HB, July 5, 1988, at 1.

39. Ren, *supra* note 32, at 18-19.

million *yuan* each were based there. Wenzhou, often cited as the pilot city for private economic development, was home to more than 20,000 private enterprises, making up the principal part of its economy and providing seventy percent of its industrial output.⁴⁰ Guangdong has also been an important area for individual and private business;⁴¹ according to one informal prediction, the individual and private sector would constitute twenty-four percent of the economy by the end of 1989.⁴² Shenyang in Liaoning province, an early center for economic reform, has also been cited for its thriving private economy.⁴³

Private enterprises employed an average of sixteen workers, and less than one percent hired more than 100 workers, according to government figures.⁴⁴ But some private enterprises employed large numbers of workers and operated on a vast scale for China. For example, Zhang Guoxi of Jiangxi, described as possibly the richest of China's private entrepreneurs, revealed in a 1988 interview that he owned "thirty-two factories, seven commercial companies and a network of cottage industries."⁴⁵ Liang Yifeng of Fujian amassed an estimated personal fortune of two million *yuan* from his color-photo developing business.⁴⁶ Zhao Wanyi, whose Xi'an nursery supplies hotels with plants and flowers, estimated he had around 1.2 million *yuan* invested in his business.⁴⁷ Yet another entrepreneur, Liu Xigui, was reported to run northeast China's largest private transport company, with forty-six motor vehicles as well as five factories and stores, and 230 employees.⁴⁸

40. Yang & Shang, *Private Business Gains Firm Footing*, China Daily, Nov. 9, 1988, at 4. According to another report, Wenzhou had "more than 10,000 private enterprises," employing a total of around 100,000 workers. Sang, *Wenzhou Siyou Jingji de Tedian ji qi Qishi* (Characteristics of and Inspirations from the Private Economy in Wenzhou), Yatai Jingji Shibao, Apr. 23, 1989, at 2. Zhang, *Private Businesses May Fare Better*, China Daily, Feb. 20, 1989, at 4.

41. *Guangzhoushi Geti Jingji Jiankang Fazhan* (Healthy Development of the Private Economy in Guangzhou Municipality), RMRB, Mar. 1, 1988, at 1.

42. Interview at Guangzhou (May 7, 1989).

43. *Private Firms Flourish*, China Daily, June 4, 1988, at 2.

44. Ren, *supra* note 32, at 19.

45. Hood, *Meet China's Mr. Big*, S. China Morning Post (Saturday Review), May 14, 1988, at 1.

46. *Millionaire Has No Time for Politics*, H.K. Standard, May 25, 1988, at 6.

47. Graham, *Cashing in on a New Revolution*, S. China Morning Post (Review), April 22, 1989, at 7.

48. *The Making of a Modern Millionaire*, S. China Morning Post (Review), June 25, 1988, at 5. It was reported in June 1989 that Australia had approved its first business migration application from China. The applicant, a private entrepreneur from the Shenzhen Special Economic Zone, had been able to put together the necessary US\$481,000 in order to qualify. *Chinese Capital Flight*, FAR E. ECON. REV., June 8, 1989, at 12.

II. THEORETICAL BASIS FOR PRIVATE ENTERPRISE

A. Definition and Nature of Private Enterprises

Despite official encouragement of the new private businesses, many theoretical questions had yet to be formally answered, the most basic being their exact delimitation. If the private economy was to be recognized, how should it be defined (and what limits should be placed on it)? What exactly was a private enterprise and what features distinguished it from the individual household firms? In an attempt to address those questions, many articles on the private economy (*siren* or *siying jingji*) analyzed their "special characteristics" and the distinctions between private and individual business.

Some theorists took a broad approach: the term private economy (or private enterprise) referred to any form of non-public ownership, including individual firms, capitalist enterprises and even private capitalist businesses surviving in China before 1956. In their view, the term was a neutral one denoting any form of private ownership, and further research would be necessary to distinguish between individual and capitalist forms.⁴⁹ But other theorists increasingly argued that the term private economy referred only to the private, capitalist, labor-hiring economy, whereas the term individual economy meant the economy of individual laborers. There were thus two kinds of private ownership in the PRC: private ownership of the laboring people (the individual economy) and capitalist private ownership (the private economy). One form was based on an individual's own labor and the other was based on hired labor.⁵⁰ Individual firms might employ a few workers, but that could not change their essential nature or turn them into private firms; only an enterprise that employed a large number of workers could be termed a private capitalist enterprise.⁵¹

49. Xiao, *supra* note 16, at 5-6, construed in Han, *supra* note 30, at 1. Others took a slightly narrower approach: although the term could cover any businesses not publicly owned (including pre-1956 businesses), they believed it should be applied only to the newer individual economy and the larger firms that developed from it. For example, see Xiao, *supra* note 16, at 5-6.

50. Han, *supra* note 30, at 1. Some, however, argued that there were really three forms of private ownership of the means of production: individual, if it was operated by a family or an individual; partnership if it was operated by two or more persons; and private enterprise if it was operated with hired labor. *Dui Siren Qiye de Jidian Renshi* (Reflections on Private Enterprises), in 14 GONGSHANG XINGZHENG GUANLI 38, 38 (1987).

51. Han, *supra* note 30, at 1. This distinction is similar to that made in the 1954 Constitution between "capitalist ownership" and "individual ownership." See *supra* note 11 and accompanying text.

Thus the hiring of labor was most frequently cited as the distinguishing feature of the private economy. But was the number of workers significant and, if so, how many workers were necessary for the firm to qualify as a private enterprise? Some writers argued that since the ratio of firms to the number of employees was 1:1.5 and most individual firms did not hire any workers, two outside workers would be a more appropriate limit; any firm that hired more than two workers should therefore be classified as a private firm. Yet another view held that different limits on the number of workers should be set for different industries or trades. Others believed that the distinction between individual and private firms should be a question of labor exploitation and distribution, rather than simply the number of employees.⁵² According to the most common view, however, the appropriate minimum for private firms was eight employees, based on the limit set by the Individual Regulations and ultimately on Marx's analysis in *Capital*.⁵³

Although the key distinction between individual and private firms came to be the number of workers they hired, some theorists analyzed a variety of other factors, suggesting that the standard should not be a simple one.⁵⁴ One writer, Yu Fulong, took a less mechanical approach, although he organized the special characteristics defining private enterprise into four categories. First, a private enterprise was one in which the means of production were privately owned, which distinguished it from contracting or leasing arrangements by individuals. Second, in private enterprises, distributions were made according to capital (investment), which distinguished private partnerships from cooperative operations.⁵⁵

52. *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 38.

53. The Individual Regulations permitted two assistants and five apprentices, for a total of seven "workers" in the firm; thus eight employees became the magic number for distinguishing private from individual firms. But Marx's analysis is also cited by some writers as the basis for choosing eight. *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 38; Luo, Quan & Gao, *Woguo Siying Qiye Lifa Tanta* (Inquiries into Legislation Relating to Private Enterprises in our Country), *Fazhi Ribao*, Feb. 1, 1988, at 3. In the Soviet Union, a 1921 decree permitted the establishment of small-scale enterprises employing not more than ten or twenty workers, depending on the type of industry. J. HAZARD, *infra* note 58, at 173. But such rules were based on convenience, not principle. *Id.* at 172.

54. Some tests were still quite mechanical: according to one approach, an enterprise had to meet five conditions to be classified as private: (1) a certain number of workers, set according to the industry, (2) a fixed place of business, (3) articles of association, an accounting system and systematized management, (4) fixed capital and in particular floating capital of perhaps 30,000 to 50,000 *yuan* and (5) minimum net profits of perhaps 10,000 *yuan*. *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 1.

55. Some theorists had argued that any definition of the private economy ought to

Third, private enterprise took hired labor as the basis of its operations; if the owner employed his own labor or that of his family as the basis of profit-making operations, then it was an individual firm; but if there were many employees, if the owner took hired labor and relatively large amounts of capital as the basis for profit-making operations, then it was clearly private. The term "employee" referred to someone who did not own the means of production, had no share in the business and was not a family member of the owner. Yu drew a distinction between labor-intensive and capital-intensive trades or industries (such as hotels or transport) and suggested a different minimum number of employees for the two types: seven or more for capital-intensive and ten or more for labor-intensive businesses.⁵⁶ The fourth special characteristic of private enterprise was its substantial organization, which meant a fixed place of business and the necessary facilities, a financial accounting system and a certain amount of floating capital. Since most such operations started out as individual firms, by the time they had hired ten workers they should have acquired all of these features, Yu believed.⁵⁷

B. Ideological Justification

Whether or not they were formally labeled capitalist, private businesses raised serious ideological problems: private individuals were permitted not only to own the means of production in their businesses but also to hire outside labor, with the consequent possibility of exploitation. Both practices should have violated basic tenets of Marxism and indeed were prohibited in many other socialist states at the time.⁵⁸ How could Chinese theorists justify their tolerance (and

consider these arrangements and should not make the distinction on the basis of hired labor. They noted that in rural areas some people were engaged in contracting and leasing (e.g., of vehicles); although they might not hire workers directly, they were able to earn very large incomes and should therefore be included in any study of the private economy. Han, *supra* note 30, at 1.

56. Yu, *Guanyu Guanli Siren Qiye de Jige Wenti* (Some Issues Relating to Private Enterprise Regulation), 1987 JINGJI FAZHI, NO. 10, at 13, at 13-15.

57. *Id.* at 15. A similar, if simpler, version of private enterprise attributes was given in Bian, *Lun Siying Qiye de Falu Diwei* (On the Legal Status of Private Enterprises), ZHENGFA LUNTAN, Aug. 1988, at 34. Their legal attributes are: first, that their property is privately owned; second, they rely on hired labor; third, they are economic organizations; and fourth, the rights and duties (of owners and workers) are not completely equitable. *Id.* at 35-36.

58. Before the recent introduction of reforms in the Soviet Union, for example, the state adopted a very strict view on the issues of private ownership of the means of production and the hiring of workers. Theorists drew a distinction between "private" property, meaning private capital used to make productive investments (which individuals were not permitted to own), and

even promotion) of capitalist business?

The first theoretical support was created for individual firms; the Party's 1984 decision on economic reform,⁵⁹ for example, provided the ideological justification for the encouragement of individual enterprises in a socialist society. According to that decision, the "essential task of socialism" is the development of the forces of production and the creation of ever more social wealth to meet the people's material and cultural needs.⁶⁰ Although the state sector must constitute the leading force, diversified economic forms, including collective and individual sectors, must also be developed. The individual economy in China is a "valuable adjunct" to the socialist economy because of its role in "expanding production, meeting the people's daily needs and providing employment;" since it is linked to the socialist economy, it cannot be viewed in the same light as one linked to capitalist private ownership.⁶¹

Such arguments in support of the individual economy have been reiterated or expanded upon in many articles following the 1984 Decision. According to the commentators, the individual workers or households were originally individuals not participating in state or collective economic organs (i.e., the unemployed), who used small-scale production tools or a small amount of capital, in addition to their own labor, to engage in productive activities that did not exploit others. Distribution was still based on the results of their own labor as well as that of their families, in combination with their own means of production. Such activities could not, it was argued, be considered the

"personal" property, referring to property intended to meet personal consumption needs (which individuals were permitted to own). J. HAZARD, *supra* note 14, at 202. Before its recent amendment, article 13 of the U.S.S.R. Constitution also made clear that the basis of personal ownership of citizens was required to be "labor income," and specifically provided that, in turn, such personal property "should not serve to derive non-labor income nor be used to the prejudice of the interests of society." U.S.S.R. CONSTITUTION (1971) art. 13, *trans. in* BASIC DOCUMENTS OF THE SOVIET LEGAL SYSTEM 6-7 (W. Butler ed. 1983). In addition, strict rules were applied to control and restrict individual artisans, whose work was required to be based on personal labor without the use of another's labor. W. BUTLER, *SOVIET LAW* 187 (2d ed. 1988). Modifications were introduced during the 1987 and 1988 economic reforms, relaxing some restrictions; the 1989 cooperative movement supported by the government was a very limited form of private enterprise. *Id.* at 187-88; Dobbs, "Kremlin Averts Effort by Supreme Soviet to Curtail Cooperatives," *Int'l Herald Tribune*, Sept. 27, 1989, at 2.

59. *Zhonggong Zhongyang Guanyu Jingji Tizhi Gaige de Jueding* (Decision of the Chinese Communist Central Committee on the Reform of the Economic Structure) (adopted Oct. 20, 1984), RMRB, Oct. 21, 1984, at 1 [hereinafter the 1984 Decision] (English translation published by Joint Publishing Co. (Hong Kong Branch) 1984).

60. *Id.* art. 2.

61. *Id.* art. 8.

same as those in the private economies of capitalist countries, because in the PRC they only supplemented the public economy and were subject to its leadership, administrative regulation and supervision. In addition, individual enterprise accorded with the goal of increasing production and thus was used to develop and encourage the socialist system.⁶² In other words, the individual economy was socialist because it was non-exploitative in character, because it served socialist goals and because it was simply a supplement to the dominant socialist public economy.

The new private enterprises, however, presented greater ideological difficulties than the individual enterprises from which they had developed. Although individual household businesses were clearly in private hands, they had, at most, few employees and their assets would ordinarily have been small-scale. But some private entrepreneurs employed large numbers of workers and did not themselves engage in labor, some also owned vast amounts of property and became rich. Such people looked very much like capitalists.⁶³

62. R. TONG, P. JIN, Z. ZHAO & Q. LIU, *MINFA YUANLI* (Principles of Civil Law) 180-81 (2d ed. 1985). S. HU, Y. PAN & Y. ZHANG, *MINFA TONGZE JIANGHUA* (Lectures on the General Principles of Civil Law) 193 (1986). L. WANG, L. FANG & M. GUO, 2 *MINFA XINLUN* (New Discussions on Civil Law) 177-78 (1988).

63. As the above discussion shows, some commentators did describe private business as "capitalist" or analyzed what they regarded as its capitalist nature. According to one writer, there were two kinds of capitalist enterprise in China at the time: one grew out of foreign investment and the other, local individual enterprises. In his opinion, an enterprise hiring ten, several tens or even one hundred employees must be viewed as a capitalist enterprise. Xiao, *supra* note 16, at 6. Others agreed. But if foreign capitalists were allowed to engage in this sort of exploitation in China (i.e., through joint ventures), then how could Chinese enterprises be barred from a certain amount of exploitation as well? Liang, *Yao Zhongshi Siren Jingji de Fazhan* (The Development of the Private Economy Ought to Be Emphasized), 32 *ZILIAO YU WENGAO*, 17, 19 (1986).

Later writers often suggested that Chinese private enterprises were *not* capitalist; thus, despite some apparent similarities to private enterprises in capitalist countries, in fact no class relations of oppression existed, and the owner and workers were equal in the PRC. Hu, *Shilun Woguo Siren Qiye de Falu Diwei yu Tiaozheng* (Preliminary Discussion of the Legal Status and Regulation of Private Enterprises in Our Country), *NONGYE JINGJI WENTI*, Nov. 19, 1987, reprinted in *JINGJI FA*, 79, 80 (1988). Other theorists analyzed the labor relations of private enterprises in China and capitalist systems and found important differences. First, their status and use differed in capitalist societies, where the means of production remain in the hands of a very small number and everyone else has nothing; in China, public ownership is the base and the privately owned sector is just a supplement. Second, in capitalist societies the only aim of capitalists in hiring workers is to obtain surplus labor value, whereas in socialist states the aim is to satisfy the needs of the broad masses of the people. Third, in capitalist societies, workers are unfree and have no choice but to suffer exploitation by capitalists, whereas in socialist states they are in fact free. Fourth, in socialist systems, the owner also participates in labor, unlike capitalists. Fifth, since China is on the road to socialism, the direction differs from capitalist states, and private enterprises will eventually be collectivized. *Tantan Siren Gugong Wenti* (A

The disadvantages inherent in permitting the growth of such private firms were also recognized by PRC theorists. Within the enterprise, the owner's position was very strong, since he had large amounts of capital and the right to set all policy, whereas the workers had little power; clearly, he relied on their surplus labor to make his profit. From society's point of view, tolerance of private firms could also lead to many social problems, including speculation, profiteering and other unsavory activities.⁶⁴

For many commentators, however, the advantages seemed to outweigh the disadvantages. Those advantages were, first, that the private economy would provide competition for the public economy, encourage it to improve management and raise its level of service; it would also serve as a supplement to the public economy in order to satisfy the needs of the people's livelihood. Second, enterprises, especially large-scale enterprises, could help to raise the productive forces of the economy. Third, the private economy could solve the problem of labor employment. Fourth, private enterprises could increase the accumulation of funds and capital for the nation through the taxes they paid. And fifth, the private economy could produce a special breed of entrepreneur, one who was innovative and would dare to implement ideas that state enterprises would not be willing to try.⁶⁵

Finally, however, the private economy received clear and official ideological approval in the report delivered by then General Secretary Zhao Ziyang at the Communist Party's Thirteenth National Congress held in October 1987.⁶⁶ At the same time he affirmed the predominance of public ownership, Zhao also stressed the development of diverse sectors of the economy, and as a general justification for such economic policies he advanced the theory of the "primary stage of socialism" (*shehuizhuyi chuji jieduan*).⁶⁷ According to that theory, although China is a socialist country, it is still only in the primary

Discussion about Private Employment Issues), 2 JINGJI FAZHI 6, at 6-7 (1987).

64. Han, *supra* note 30, at 4.

65. *Id.*

66. *Yanzhe You Zhongguo Tese de Shehuizhuyi Daolu Qianjin* (Advance Along the Road of Socialism with Chinese Characteristics) (delivered Oct. 25, 1987), RMRB, Nov. 4, 1987, at 1-3 [hereinafter the 1987 Report], *trans. in* BEIJING REV., Nov. 9-15, 1987, at 23. Early in 1987, the Central Committee had already issued Zhongyang Wuhao Wenjian (Central Committee Document No. 5) endorsing private enterprise through a policy of "allowing it to exist, strengthening supervision over it, promoting what is beneficial and abolishing what is harmful, and progressively developing it." *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 38; Ren, *supra* note 32, at 21.

67. Many of the arguments had already been anticipated. For example, see Han, *supra* note 30, at 3; Dai, *Preliminary Stage of Socialism*, BEIJING REV., June 15, 1987, at 4.

stage of socialism, a stage which is expected to last one hundred years from the 1950s. During this stage, the principal contradiction is not class struggle but the contradiction between the growing material and cultural needs of the people and China's backward production. As a basic principle, it is therefore necessary to develop a planned commodity economy with public ownership playing the dominant role, but diverse sectors of the economy — including the private sector — must also be developed.

Zhao acknowledged that the private sector of the economy involves wage labor, and that the owners of some private enterprises employing workers obtain unearned income, resulting in unequal income distribution. Why should this be tolerated?⁶⁸ Because a certain degree of development of the private sector "promotes production, stimulates the market, provides employment and helps in many ways to meet people's needs," and it is therefore a necessary and useful supplement to the public sector. And so long as the private sector is bound up with the public sector, it will remain subordinate to it and strongly influenced by it.⁶⁹ Presumably it cannot therefore be equated with capitalist enterprise in a capitalist society.

In other words, the justification for private enterprise is essentially the same as that for individual firms, and at first glance, it appears to be a pragmatic one: to meet certain goals such as increased production and the creation of employment opportunities that the state cannot provide. Private enterprise cannot be justified because it is inherently socialist in nature — it is *not* — but because it is limited and may prove beneficial to the economy during the "primary stage of socialism." From a theoretical point of view, earlier socialist reforms were introduced too quickly, with the PRC trying to bypass some necessary capitalist development; now it is necessary to develop a commodity economy, and the introduction of certain capitalist features to the economy (even if they are not so labelled) is entirely proper. Some version of the "primary stage of socialism" justification appeared in many articles published after the 1987 Report.⁷⁰ Later pronounce-

68. Other articles have acknowledged that private entrepreneurs used surplus labor value created by their employees for developing production and for their own consumption. But the exploitation was only "moderate." *Characteristics of Private Enterprises*, JINGJIXUE ZHOUBAO (Economic Weekly), trans. in BEIJING REV., Oct. 3-9, 1988, at 39; *Private Economy Praised*, China Daily, July 16, 1988, at 4.

69. 1987 Report, *supra* note 66.

70. For example, Wang & Wang, *supra* note 29, at 31; Bian, *supra* note 57, at 34-35, 37; Shi, *Siying Qiye Lifa de Lilun Yijiu he Jiben Yuanze* (The Theoretical Basis and Basic Principles of Legislation Relating to Private Enterprises), ZHENGZHI YU FALU, Apr. 1988, at 35;

ments also refined Zhao's approach: private enterprise in China is different from private enterprise elsewhere (i.e., in capitalist societies) because it developed long after China's socialist transformation, the public sector clearly occupies the dominant place in the national economy, and the owners expend most of their profits in expanding production instead of personal consumption.⁷¹

III. LEGAL REGULATION OF PRIVATE ENTERPRISE

A. Introduction

The "primary stage of socialism" theory provided the ideological underpinnings — however weak — for the private economy, but it left unanswered many legal and practical questions about private enterprises and their legal status. For some seven or eight years, their activities and their property had received no formal protection, nor were they subject to any formal regulation. The result was unparalleled scope for private sector growth on the one hand, but also difficulties for the state and the enterprises themselves on the other.⁷²

Since there existed no official system of registration or control over private enterprises, they were often accused of tax evasion, sharp business practices and exploitation of their employees. At the same time, it was admitted that they were the object of official corruption and extortion, and lacked access to official support or approval for their activities, as well as defined property rights or guarantees of protection. The private enterprise issues most frequently raised in scholarly journals and the daily press therefore fell into several categories: the definition and legal status of private businesses, protection of their rights, labor relations, tax evasion and poor financial practices, and other illegal or questionable practices by the private sector.⁷³

Liu, *Lun Siren Qiye de Falu Diwei* (On the Legal Status of Private Enterprises), 1988 FAXUE ZAZHI, NO. 3, at 26, 26-27.

71. Ren, *supra* note 32, at 21.

72. Commentators all agreed that legislation was necessary to deal with those problems. Han, *supra* note 30, at 2; Bian, *supra* note 57, at 39.

73. Most articles cited the same problems. See e.g., *Private Businesses Face Many Difficulties*, China Daily, May 27, 1988, at 1; *Constitutional Protection for Private Enterprises*, Ta Kung Pao (weekly ed.), Apr. 21, 1988, at 3; Zhang & Li, *supra* note 29, at 8. A comprehensive list of problems resulting from the lack of formal regulation for private enterprises is provided in Xiao, *supra* note 16, at 9. For a more theoretical treatment, see Liu, *Siyong Qiye Falu Tiaozheng Chuyi* (Preliminary Discussion on the Legal Regulation of Private Enterprises), Fazhi Ribao, June 8, 1988, at 3.

B. Private Enterprise Legislation

After Zhao Ziyang's call for the enactment of laws and regulations "to protect [the private economy's] legitimate interests and to provide it with more effective guidance, supervision and control" in the 1987 Report,⁷⁴ legislation soon followed. As is often the case in the PRC, however, the first private enterprise legislation to be enacted was regional rather than national; early statutes included those adopted in Wuhan, Shenyang and Guangdong,⁷⁵ for example. For the most part, those local provisions were simply drawn and experimental, although the Wuhan Provisions clearly show the influence of the 1986 Civil Law and the 1987 Individual Regulations.

Then in April 1988, amid a flurry of positive articles about private enterprise, the National People's Congress amended article 11 of the 1982 Constitution to recognize and grant protection to the private sector. The new paragraph, which tracked the provision applicable to the individual economy, stated that:

The state permits the private economy to exist and develop within the limits prescribed by law. The private economy is a supplement to the socialist public ownership economy. The state protects the lawful rights and interests of the private economy and exercises guidance, supervision and control over it.⁷⁶

The private sector had finally achieved constitutional legitimacy. More detailed legislation was obviously still necessary,⁷⁷ however, and

74. 1987 Report, *supra* note 66.

75. Wuhanshi Siying Qiye Guanli Zhanxing Tiaoli (Tentative Provisions of Wuhan Municipality on the Administration of Private Enterprises) (promulgated Nov. 15, 1987) [hereinafter the Wuhan Provisions], JINGJI FAZHI, Feb. 1988, at 40. For a comment and translation of the Wuhan Provisions, see Conner, *The PRC Constitution and Private Enterprise Regulation*, 18 HONG KONG LAW J. 486 (1988). The Shenyang regulations were reported in CHINA LAW & PRAC., June 6, 1988, at 20; and the Guangdong regulations in *Private Enterprises Given More Autonomy*, Ta Kung Pao (weekly ed.), May 26, 1988, at 4. Guangzhou adopted regulations to encourage private enterprise, even after the enactment of national legislation. Guangzhoushi Fazhan Siying Qiye de Ruogan Guiding (Certain Provisions for Developing Private Enterprise in Guangzhou Municipality), reported in *Leiyu Tan Sui Fazhan Siying Qiye Youguan Guiding* (Leiyu Discusses the Development in Guangdong of Regulations Relating to Private Enterprises), Wen Hui Po (HK), May 13, 1989, at 27.

76. 1982 CONST., art. 11, as amended Apr. 12, 1988, reprinted in *Renda Huiyi Tongguo Xianfa Xiuzheng An* (Session of People's Congress Passes Amendment to Constitution), RMRB—HB, Apr. 13, 1988, at 1.

77. Most commentators wished to see it enacted as soon as possible. *Pubian Zantong*

shortly thereafter the long-awaited national legislation governing private enterprises was formally enacted. In June 1988, the State Council promulgated three sets of regulations: the Provisional Regulations of the PRC Concerning Private Enterprises⁷⁸ and two shorter statutes relating to the taxation of private enterprises and their investors.⁷⁹ The new legislation was intended to formally define private enterprises, provide rules for their establishment and dissolution, set forth their rights and duties, and exert some control over their labor relations and financial affairs. For the first time, private enterprises were also specifically made subject to other, more general legislation, such as the Administrative Regulations of the PRC on the Registration of Enterprise Legal Persons.⁸⁰

The next year the Regulations were further supplemented by the Implementing Measures for the Provisional Regulations of the PRC Concerning Private Enterprises,⁸¹ as well as by more detailed provisions relating to the financial and tax affairs of private businesses.⁸²

Xianfa Xiuzhengan Caoan (Draft Amendment to Constitution Wins Broad Support), Fazhi Ribao, Apr. 4, 1988, at 2; *Pubian Zancheng Baozhang Siying Jingji Cunzai he Fazhan* (Broad Agreement with Safeguarding the Existence and Development of the Private Economy), RMRB, Apr. 4, 1988, at 1.

78. Zhonghua Renmin Gongheguo Siying Qiye Zhanxing Tiaoli (Provisional Regulations of the PRC Concerning Private Enterprises) (promulgated June 25, 1988) [hereinafter the Regulations], in *ZHONGHUA RENMIN GONGHEGUO FALU QUANSHU* (Collection of the Laws and Regulations of the PRC) 1184 (1989) [hereinafter *FALU QUANSHU*]. A translation of the Regulations appeared in *E. ASIAN EXEC. REP.*, Oct. 15, 1988, at 24 (A. Conner trans.).

79. Zhonghua Renmin Gongheguo Siying Qiye Suodeshui Zhanxing Tiaoli (Provisional Regulations of the PRC Concerning Income Tax on Private Enterprises) (promulgated June 25, 1988) *reprinted in FALU QUANSHU*, *supra* note 78, at 689 [hereinafter the Income Tax Regulations]; and Guanyu Zhengshou Siying Qiye Touzizhe Geren Shouru Tiaojieshui de Guiding (Provisions Relating to the Imposition of Individual Income Adjustment Tax on Investors in Private Enterprises) (promulgated June 25, 1988) *reprinted in FALU QUANSHU*, *supra* note 78, at 689 [hereinafter the Investor Tax Provisions]. Translations of both regulations appeared in *E. ASIAN EXEC. REP.*, *supra* note 78, at 24.

80. Zhonghua Renmin Gongheguo Qiye Faren Dengji Guanli Tiaoli (Administrative Regulations of the PRC on the Registration of Enterprise Legal Persons) (promulgated June 3, 1988) *reprinted in FALU QUANSHU*, *supra* note 78, at 1722 [hereinafter the Registration Regulations].

81. Zhonghua Renmin Gongheguo Siying Qiye Zhanxing Tiaoli Shixing Banfa (Implementing Measures for the Provisional Regulations of the PRC Concerning Private Enterprises) (effective Feb. 1, 1989) *reprinted in Shenzhen Tequbao*, Feb. 27, 1989, at 8 [hereinafter the Measures]. A translation of the Measures appears as an appendix to this article.

82. Zhonghua Renmin Gongheguo Siying Qiye Suodeshui Zhanxing Tiaoli Shixing Xize (Implementing Rules for the Provisional Regulations of the PRC Concerning Income Tax on Private Enterprises) (promulgated Nov. 17, 1989), *reprinted in 1989 ZHONGGUO SHUIWU*, No. 1, at 26; Guojia Shuiwuju Guanyu Siying Qiye Shuishou Zhengce de Ruogan Guiding (Certain Policy Provisions of the State Taxation Bureau Relating to Private Enterprise Tax Collection) (promulgated Nov. 17, 1988), *reprinted in 1989 ZHONGGUO SHUIWU*, No. 1, at 33; Siying Qiye

By early 1989, therefore, private enterprises were subject to the most extensive legislation to govern them since the founding of the PRC forty years before. What sort of regime did that legislation provide for the private sector, and to what extent did it successfully address the problems that had arisen (or been debated) during the years before its enactment?

C. Legal Definition

The most fundamental issue was simply the legal status and exact delimitation of private enterprises. The 1982 Constitution as originally enacted and the Civil Law had referred only to state, collective and individual ownership, with no mention of the private sector or its rights. After years of debate a private enterprise was now officially declared to be a "profit-seeking economic organization with eight or more employees⁸³ and whose property is privately owned."⁸⁴ The distinguishing feature of the private enterprise (besides its private ownership of property) thus continued to be its use of hired labor, with eight employees fixed as the magic number.

The legal definition of private enterprise did not include other basic elements sometimes proposed during the period of experimentation. The Regulations set no minimum capital requirements, minimum profit levels or scale of operations necessary to qualify as a private business,⁸⁵ nor did they provide direct limitations on the size of private enterprises.⁸⁶ This meant that in practice the newly defined

Caiwu Guanli Zhanxing Banfa (Provisional Measures on the Financial Administration of Private Enterprises) (promulgated Nov. 21, 1988), *reprinted in* 1989 ZHONGGUO SHUIWU, No. 2, at 44. I am grateful to China Law & Practice Ltd. for providing me with the texts of these regulations.

83. In contrast to the Individual Regulations, the Regulations did not shrink from using the term "employees."

84. Regulations, *supra* note 78, art. 2. Compare the 1950 definition of private enterprises (*siying qiye*): "various kinds of economic business (*jingji shiye*) invested in, operated by and engaged in for profit by private individuals." 1950 Regulations, *supra* note 9, art. 2.

85. There were arguably some indirect requirements, such as the possession of capital and personnel "appropriate" to the scale of proposed production, which was made a precondition for registration. Regulations, *supra* note 78, art. 13. Contrast the definition provided in art. 2 of the Wuhan Provisions, *supra* note 75: "economic organizations whose establishment has been approved according to law, in which the means of production belong to private individuals, which have eight or more employees (in commercial enterprises, five or more), whose capital is at least 20,000 yuan, which have an appropriate fixed place of production and operations and facilities, and in which the proprietor of the enterprise is engaged in regular production and operating activities."

86. Some writers had previously suggested limiting the number of workers to thirty to fifty (or, at most, eighty) in ordinary firms, and to no more than 100 in labor-intensive industries, but no such limits were adopted. Limitations on the number of workers would in turn

private enterprises might still grow to vast size, with few significant limits (besides limitations on raising capital through stock offerings, for example). But was the definition, relying as it did solely on the number of employees, sufficient to distinguish them from individual firms? The distinction was arguably simplistic, but presumably firms with large work forces would operate on a larger scale and with more capital than individual household businesses, and those with few employees would be less likely to amass large amounts of capital.

D. Business Organization

Before the enactment of the Regulations, the possible business forms private enterprise might take had not been clarified. It was far from clear whether private enterprises could incorporate and thus allow their investors to limit their liability, or whether they would be restricted (as in the Wuhan Provisions)⁸⁷ to partnerships, the principles for which had been spelled out in the Civil Law.

The Regulations provided for three possible forms of business organization: sole proprietorship, partnership⁸⁸ and limited liability company.⁸⁹ Sole proprietors could not incorporate and thus had to bear unlimited liability for the debts of the enterprise.⁹⁰ Partnerships were formally defined as enterprises in which "two or more persons, in accordance with an agreement, invest their funds and share profits and losses, and which they operate jointly."⁹¹ The rules relating to partnerships tracked those contained in the Civil Law (which would have been applicable in any case): a written agreement was required, and partners were to bear joint and unlimited liability for the obligations of the enterprise.

have limited the size of enterprises and the kinds of businesses they could operate. Liang, *supra* note 63, at 19.

87. The Wuhan Provisions, *supra* note 75.

88. Partnerships had already been recognized in the Civil Law, *supra* note 28, arts. 30-35, but this provision meant that private enterprise partnerships could operate on a large scale, since they were allowed to hire as many workers as they wished.

89. The 1950 Regulations had provided for sole proprietorships, partnerships and three types of companies (including both limited and unlimited). 1950 Regulations, *supra* note 9, art. 3.

90. Regulations, *supra* note 78, art. 7. Before the Regulations were enacted, some drafters had argued that sole proprietors should be allowed to qualify as legal persons, which would have resulted in limited liability for them, providing they met certain conditions. Interview in Hong Kong (March 10, 1988). But most drafters obviously disagreed, and consequently sole proprietors were not given legal-person status.

91. Regulations, *supra* note 78, art. 8.

Most significant was the power granted to private enterprise owners to conduct business as a limited liability company. Such a company was required to have at least two investors and without special approval could have no more than thirty; it could issue stock to its investors, but not to the general public.⁹² The resulting private enterprise company was therefore not the unlimited, public corporation that some larger businesses may have hoped for;⁹³ it more nearly resembled a close corporation, with its limited number of owner-investors and the restricted offering and transfer of shares. The limits on shareholders no doubt reflected the cautious view of the leadership towards share-issuing and an unfavorable attitude towards the growth of really large corporations.⁹⁴ But this modified corporate form still provided Chinese entrepreneurs with real advantages (and the potential for greater growth) over other business forms: capital could be pooled from more than two or three investors, who could also limit their liability.

Since the PRC has not yet enacted a general company law, the Regulations' rules on limited liability companies are of some general interest. Most of the provisions are unsurprising: the company name had to indicate its limited liability and companies were required to adopt articles of association conforming to the Regulations,⁹⁵ which

92. Regulations, *supra* note 78, art. 9. This is in contrast to art. 3 of the Wuhan Provisions, *supra* note 75, which allowed a one-person investment and operation or a group of investors to act as partners but did not provide for incorporation.

93. Stone Company, for example, is said to have wanted to issue stock to the public. Faison, *Stone Group Could Set Trend of Share Ownership in China*, S. China Morning Post (Business Post), Oct. 27, 1988, at 1. Technically classified and originally registered as a collective enterprise, the Stone Company has in some respects behaved like a private enterprise, and is often referred to in the Western press as "private." According to one source, company management considered it a "*minjian*" enterprise — something closer to a large public corporation. Conversation with Hong Kong-based lawyer at symposium in Hong Kong where author spoke on private enterprises in the PRC (May 18, 1989).

94. Despite the opening of modern securities markets in Shenzhen and Shanghai, few shares have been issued, and the regulation is clearly inadequate. Wang, *Securities Market with Socialist Flavour*, China Daily (Business Weekly), Nov. 12, 1990, at 1. Chen & Wang, *10.3m Yuan Start for Shanghai Exchange*, China Daily, Dec. 20, 1990, at 1; Wudunn, *Shanghai Exchange Opens*, S. China Morning Post (Business Post), Dec. 20, 1990, at 1. At present only a few municipal regulations or national notices deal with the issuance of stocks and bonds by enterprises. See e.g., Interim Procedures of Guangdong Province for the Administration of Stocks and Bonds (adopted Oct. 10, 1986), *trans.* in E. ASIAN EXEC. REP., May 15, 1987, at 22; Zheng, *Securities Regulation in China: Development and Conflicts*, E. ASIAN EXEC. REP., May 15, 1987, at 7. In April 1987, the State Council issued a directive restricting new issuance of stocks and bonds by state and collective enterprises, meaning that public securities offerings are limited for these other enterprises as a means of raising capital too.

95. Regulations, *supra* note 78, art. 9.

meant that they must include their name and domicile, registered capital and amount contributed by each investor, basis for sharing profits and losses, organizational structure and so forth.⁹⁶ But the Regulations failed to provide comprehensive rules even for the private enterprise company. No doubt because such companies could not issue shares to the public, no provisions governed such matters as shares, public offerings or disclosure. But neither were corporate governance requirements relating to directors, meetings or resolutions spelled out in the Regulations; such omissions could still lead to uncertainty, especially if the company failed to clearly provide for these matters in its articles of association.⁹⁷

Before the enactment of the Regulations, it was also questionable whether any or all private enterprises should qualify as legal persons; the Civil Law had not included private enterprises as possible legal persons.⁹⁸ Some commentators had argued that at least stock-issuing enterprises should be permitted — even required — to qualify as legal persons, and that some large-scale sole proprietorships and partnerships should also be allowed to do so.⁹⁹ In the end, the Regulations required only limited liability companies to qualify as legal persons, and it was left to the Registration Regulations to provide for the mechanics of registration requirements for private enterprises.¹⁰⁰

E. Formalities for Establishment and Dissolution

The PRC authorities complained, before the enactment of the Regulations, that private enterprises often failed to register and obtain a business license or that they registered as collectives instead — but there was of course no formal system of registration for private firms. The Regulations finally provided the necessary procedures and requirements for the establishment and dissolution of private enterprises. First, the Regulations established who might open a private

96. Regulations, *id.* art. 14.

97. For a discussion of potential difficulties, see D. Wong and C. Oechsli, *Getting a Binding Contract: Legal Status and Authority of Chinese Enterprises and Their Representatives*, E. ASIAN EXEC. REP., Jan. 15, 1989, at 9; D. Wong and C. Oechsli, *Chinese Enterprises -- Their Legal Personality, Liability and Agents*, ASIAN LAW & PRAC., Jan. 30, 1989, at 32.

98. Civil Law, *supra* note 28, ch. 3. It does, however, provide the conditions that must be satisfied to qualify as a legal person: establishment in accordance with law; possession of the necessary property or funds; possession of its own name, organizational structure and premises; and ability to assume civil obligations independently. *Id.* art. 37.

99. Yu, *supra* note 56, at 15-16.

100. Regulations, *supra* note 78, art. 10; Registration Regulations, *supra* note 80, art. 2.

enterprise: essentially the retired or unemployed, reflecting one of the strongest reasons for tolerating the existence of private business. They included the clearly unemployed (those "waiting for employment in the cities and towns"), the underemployed (an increasing number of rural residents), the self-employed (individual entrepreneurs) and others who had been permitted to resign from their jobs.¹⁰¹ "Others," according to the Measures, particularly included retired persons with scientific or technological backgrounds¹⁰² but even people who had been released from prison or reeducation through labor (who might otherwise be unemployable) were originally said to be eligible.¹⁰³

The would-be enterprise owners had then to meet substantive requirements; their applications were required to show the appropriate capital and personnel, a regular place of business with the necessary facilities, and a lawful scope of business. The applicants were also required to register with the administration of industry and commerce authorities and to obtain a business license before commencing business. That registration was to be amended upon any important changes in the firm's status, such as merger, division or changes in the scope of business.¹⁰⁴ Companies were also required to qualify as a legal persons in accordance with the Registration Regulations and the Measures.

F. Permissible Scope of Business

The Regulations specifically permitted private enterprises (like individual households) to engage in industrial, construction, communications and transportation, commercial, food and beverage, service, repair and "other" trades, but added "scientific and technological consultancy" to the basic list of seven businesses.¹⁰⁵ The Measures also added cultural, artistic, tourist, sports, foodstuffs, medicines and other similar trades. Private firms might operate in more than one trade or business concurrently and were also permitted to establish branch factories, stores or companies.¹⁰⁶ The Regulations themselves placed few limitations on the scope of business activities for private enter-

101. Regulations, *supra* note 78, art. 11.

102. Measures, *supra* note 81, art. 3.

103. Ren, *Guli Fazhan Siying Jingji Shi Yixiang Changqi Fangzhen* (Encouraging the Development of the Private Economy is a Long-term Policy), RMRB-HB, June 30, 1988, at 3.

104. Regulations, *supra* note 78, arts 13-16.

105. Regulations, *supra* note 78, art. 12.

106. Measures, *supra* note 81, arts. 5-6.

prises, but they were subject to restrictions contained in other legislation. Private enterprises could not engage in military or financial industries,¹⁰⁷ or do business in commodities prohibited by the state, which included cultural objects and antiques, jewelry, rare minerals, stamps, firearms and ammunition, military industrial products, cars and civilian explosives.¹⁰⁸ These restrictions tended to fall into one of several categories: those the state alone was authorized to engage in (stamps), those specifically barred to private enterprises (manufacture of private cars or civilian explosives), and those prohibited for all (prostitution or other criminal activities).¹⁰⁹

G. Rights of Private Enterprises

For years there had been no general legal protection for the rights of private enterprises, and they were subject to fees and appropriations levied without authority from all sorts of units. Nor was it clear what specific rights they might enjoy or whether those rights would be broader than for individual firms. The Regulations therefore enumerated the rights of private enterprises and their investors, particularly their property and management rights. First, private enterprise investors were plainly assured of their right to own private enterprise property, which might also be inherited.¹¹⁰ Investors were also permitted to transfer their property interests in an enterprise, although in the case of a limited liability company the transfer required the agreement of more than half the investors.¹¹¹

Private enterprises themselves were granted property and related rights. Although the right of a limited liability company to own its property was not directly addressed in the Regulations, arguably that right was implied in the definition of the limited liability company itself: "the company bears liability for company obligations with all its assets," which seems to assume that the company owns its assets. Pri-

107. This is consistent with recommended limitations on permissible trades before the enactment of the Regulations and the Measures: that they should not be allowed to engage in industries closely connected with the state plan and people's livelihood, such as military, railways or foreign trade. Liang, *supra* note 63, at 19.

108. Ren, *supra* note 103.

109. Y. BAI & J. HUANG, *supra* note 31, at 171-78.

110. Regulations, *supra* note 78, art. 20.

111. Regulations, *supra* note 78, art. 9.

vate enterprises were explicitly granted the exclusive right to their registered names and the right to apply for patents and register trademarks. Their property was not to be subject to unlawful exactions or appropriations by government units of any kind, nor could their business licenses be seized other than in accordance with lawful procedures.¹¹²

Many other rights conferred by the Regulations related to management of the enterprise by its investors, and the Regulations granted a relatively broad degree of autonomy for private enterprises. Enterprises were specifically given the right to conduct their business autonomously, to determine the structure of the enterprise and hire and fire workers, and to determine the wage system and profit distribution of the enterprise.¹¹³ Those rights were all subject explicitly or implicitly to other regulation (including the financial and employment restrictions discussed below), but the result was still to confer on the investors reasonable management powers to run the business.

The rights granted private enterprises and their investors were greater, or at least spelled out more clearly, than those for individual firms. The most striking fact is that private firms were specifically empowered to enter into Sino-foreign equity or cooperative joint ventures with foreign or overseas Chinese companies, enterprises or individuals.¹¹⁴ Those provisions reflected the role private enterprises were already playing in coastal areas, as well as the larger size and scale of operations of many private firms.

H. Financial Affairs and Taxation

From the state's point of view, haphazard financial recordkeeping by private enterprises was a major headache. Moreover, according to many reports, private entrepreneurs often failed to take the long-term view, spending or dissipating their profits as soon as they obtained them. Some private enterprise financial systems were less than sound, and they evaded taxes they should have paid.¹¹⁵ An important objective of the legislation was therefore to discourage or prevent such

112. Regulations, *supra* note 78, arts. 25, 26.

113. Regulations, *supra* note 78, art. 21.

114. Regulations, *supra* note 78, art. 22; Measures, *supra* note 81, arts. 21-23.

115. *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 39.

behavior by establishing a tax regime and other measures necessary for the authorities to exercise some degree of fiscal control. The Regulations, together with the Measures and the two tax regulations, provided rules relating to the financial affairs and taxation of private enterprises and their investors.

As a general matter, the Regulations required registration with the tax authorities and the maintenance of proper accounts and records.¹¹⁶ More specific tax rules were contained in the tax regulations,¹¹⁷ which provided for taxation of the private enterprise and of its investors. Under the Income Tax Regulations, the private enterprise was required to pay a flat rate of thirty-five percent on its taxable income (defined as the excess of its gross income over its allowable costs and expenses).¹¹⁸ Investors in the private enterprise were also subject to taxation in two respects. First, any income in the form of wages paid them by the enterprise was specifically made subject to the individual income adjustment tax. Second, investors were also liable for payment of the income adjustment tax at a flat forty percent rate on any after-tax profits they withdrew for "personal consumption."¹¹⁹

The Regulations placed no limits on the amount or type of property that might be owned¹²⁰ or used in these businesses, nor was any minimum capital specified; the only requirement was that registered capital could not be reduced. The Regulations also required that at least fifty percent of after-tax profits be reinvested in the enterprise,¹²¹ effectively limiting the funds that investors could withdraw from the business. Private enterprises had also to maintain

116. Regulations, *supra* note 78, arts. 34, 35.

117. See also tax and financial provisions cited *supra* note 82. Private enterprises were also subject to the product tax, value added tax and business tax; art. 2 of Certain Policy Provisions of the State Taxation Bureau Relating to Private Enterprise Tax Collection, *supra* note 82, provides for their collection.

118. Income Tax Regulations, *supra* note 79, arts. 2, 3.

119. Investor Tax Provisions, *supra* note 79, arts. 2, 3. Private business entrepreneurs have reportedly complained that the taxation levels are too high. Yao, *Thriving Private Business Praised*, China Daily, Nov. 24, 1988, at 4.

120. Of course, the 1982 Constitution and Civil Law place certain restrictions on the ownership of land and natural resources, but there are few other meaningful restrictions on private ownership of the means of production in the PRC. The Regulations themselves add no other restrictions. For a discussion of private property rights, see Conner, *Individual Ownership of Property in the People's Republic of China*, 21 VERFASSUNG UND RECHT IN UBERSEE (LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA) 430, at 439-443 (1988).

121. Regulations, *supra* note 78, art. 38.

a "production development fund" to be used for expansion of production, repayment of loans and investment in other enterprises, a provision that did not apply to individual firms under the Individual Regulations.

Private enterprises created "unequal distribution" problems when they produced sometimes vast differences between owners' and workers' wages.¹²² One article cited this income disparity as the worst abuse of private enterprises.¹²³ Furthermore, with some private business people becoming rich so quickly, the "red-eye disease" (*hongyan bing*) of envy was spreading rapidly. In one widely reported case, for example, the owner of a private enterprise gave up trying to run his business as a private one because of popular resentment and harassment.¹²⁴ Besides providing for taxation of the owner's income,¹²⁵ therefore, the Regulations also placed limits on the salary of enterprise managers or directors: they could receive no more than ten times the average wage of the enterprise's staff and workers.¹²⁶

I. Treatment of Employees

In contrast to the Individual Regulations, which permitted only seven "assistants" or "apprentices," the Regulations placed no limits on the maximum number of employees in private enterprises, despite earlier suggestions that this should be done.¹²⁷ The treatment of

122. *Dui Siren Qiye de Jidian Renshi*, *supra* note 50, at 39.

123. Yu, *supra* note 56, at 16.

124. *Success Leads to Trouble for Factory Owner*, S. China Morning Post, Feb. 11, 1989, at 7; John Pomfret, *Factory Forced to Go Public after Attack*, The Sunday Standard (Business Sunday), Feb. 12, 1989, at 1. Parallels could be drawn with the contemporaneous Russian cooperative movement, which allowed some limited private enterprise but met with intense popular hostility and calls for its abolition. The movement was accused of "legalizing the plunder of the working class" and making too much money by speculation and profiteering. Dobbs, *supra* note 58, at 2.

125. Yu, *supra* note 56, at 16.

126. Regulations, *supra* note 78, art. 36. Some limit was suggested by a number of writers before the enactment of the Regulations. Ding, *supra* note 29, at 69. No such restriction applied to the individual firms under the Individual Regulations, *supra* note 27.

127. Hu, *Shilun Woguo Siren Qiye de Falu Diwei yu Tiaozheng*, *supra* note 63. Others cited the limits set in Yugoslavia (fifteen workers) and East Germany (ten workers) as possible models and suggested that imposing a tax based on the number of employees might also operate as a limit. *Tantan Siren Gugong Wenti*, *supra* note 63, at 6, 8; Wang & Wang, *supra* note 29, at 8.

workers in enterprises so difficult to distinguish from capitalist firms was a sensitive issue, presenting both theoretical problems (how to justify the hiring of large numbers of private workers) and practical problems (how to eliminate the real exploitation that resulted). There appears to have been little effective labor regulation before the enactment of the Regulations and, according to frequent reports, working conditions in many private firms were poor, with long hours, low pay and no protection for workers, particularly women and children. Many private enterprises, for example, reportedly paid their workers on a piece-rate basis, forcing them to work up to fourteen or fifteen hours per day. In some firms, working conditions were rough or dangerous, lacking basic provisions for labor safety; others employed mostly child labor.¹²⁸

The Regulations therefore provided a general assurance that workers might organize trade unions and that their interests would be protected by the state.¹²⁹ The Regulations also provided that private enterprises must comply with the requirements of all labor protection legislation and obtain insurance for their workers. Like individual firms, private enterprises were required to sign contracts with their workers defining the rights and duties of both parties, some of which terms were specified in the legislation; the contracts had then to be filed with the local labor administration authorities.¹³⁰ Because of complaints about private enterprise treatment of their workers, specific stipulations (not appearing in the Individual Regulations) included an eight-hour workday, provision for broad powers of labor unions and a prohibition against hiring workers under the age of sixteen.¹³¹

128. *Siyang Qiye Jiandu Guanli Gongzuo Jidai Jiaqiang, Siying Qiye Guanli Falu Yinggai Jinkuai Zhiding* (There is an Urgent Need for Improving the Supervision and Regulation of Private Enterprises; Laws Regulating Private Enterprises Must be Quickly Promulgated), Fazhi Ribao, May 21, 1988, at 1; Xiao, *supra* note 16, at 9. Zhang & Li, *supra* note 29, at 8; *Tanian Siren Gugong Wenti*, *supra* note 63, at 7. The employment of child labor by collective and private enterprises is serious and getting worse. Rong, *Yao Lifa Baohu Sanyi Weichengnianren de Chengzhang* (Laws Must Be Promulgated to Protect the Well-being of 300 Million Minors), 1989 FALU ZIXUN, No. 6, at 24. According to the PRC authorities, the worst offenders are collective, private and individual enterprises in coastal areas; up to 20% of their workforce may be children under sixteen years of age. *Woguo Yanjin Shiyong Tonggong* (Child Labor Strictly Prohibited in Our Country), RMRB, Nov. 6, 1988, at 3.

129. Regulations, *supra* note 78, art. 4.

130. Regulations, *supra* note 78, arts. 27, 28.

131. Regulations, *supra* note 78, arts. 31-33.

J. Supervision and Control

Another issue frequently discussed before the enactment of the Regulations was the involvement of private firms in a variety of bad practices — including bribery, fraud, speculation and other illegal operations — in order to make short-term profits. The primary reasons for such practices were said to be a lack of security because there was no belief in long-term support for their businesses, and the failure to provide consistent regulation of their activities.

The Regulations therefore provided a general regulatory scheme for private enterprises and cited the penalties for various kinds of illegal or undesirable activities. Private enterprises were made primarily responsible to the State Administration for Industry and Commerce authorities,¹³² who were placed in charge of their ordinary registration, supervision and investigation of illegal activities. Private enterprises were also made responsible to the labor, tax and other relevant regulatory authorities in the PRC. Penalties for violations or illegal activities ranged from fines (of 500 to 5,000 *yuan*) to revocation of their business licenses in the most serious cases.¹³³ At the same time, the Regulations set out some protection against arbitrary administrative action in a provision, standard in recent PRC legislation, that allowed appeal to higher level administrative authorities in the first instance, and from there to the people's courts. They also provided that administrative personnel would be subject to sanctions for abuse of their office in dealing with private enterprises.¹³⁴

K. Analysis of Legislation

What general conclusions can be drawn about the legal regime governing private enterprises? First, it finally provided a reasonably clear definition of private enterprises, a statement of support for their rights and a system of regulation and registration. The legislation at least addressed the practical and theoretical problems most frequently raised before its enactment.

For the most part the Regulations also recognized the real differences between individual and private firms. The eight-employee distinction was to some extent arbitrary, but the largest private enterprises were very different creatures from the ordinary one-

132. Regulations, *supra* note 78, art. 40; Measures, *supra* note 81, art. 29.

133. Measures, *supra* note 81, art. 32.

134. Regulations, *supra* note 78, arts. 44, 46.

individual firm. Hence the somewhat broader scope of permissible business activities, the greater powers (particularly related to foreign trade and investment), the provision for forming partnerships and limited companies, and (by definition) the freedom to hire more workers found in the Regulations. The more specific rules on employees and the ceilings on the salaries of managers and directors also reflected the private firm's greater potential for exploitation of its workers.

Considered as a whole, the Regulations took a remarkably liberal approach towards private (and truly capitalist) business, providing more benefits and fewer restrictions than might have been expected in a socialist state. Commentators stressed the legislation's "spirit of encouragement" for private firms,¹³⁵ a view supported by many provisions in the Regulations. One writer listed, for example, a tax regime similar to that for collective and individual firms, the broad scope of permitted business activities, the absence of a cap on the number of employees and the clear stipulations on the right of ownership and inheritance for investors. Possible restrictions on private firms, such as limits on capital and property, had also been omitted from the legislation.¹³⁶

At the same time, however, the legislation did place some limits, both direct and indirect, on private enterprises. If private business was to be encouraged to be productive, it was also to be kept to a restricted sphere, subordinate to the state sector and subject to different rules. Private enterprises therefore continued to be barred from some business activities, such as those connected with the people's livelihood or the state plan. Nor could they be permitted to grow too large or too rich, hence the prohibition of public stock offerings by private companies (and the consequent limitation of capital). Many rights were granted subject to the proviso that they accord with the provisions of other (sometimes unspecified) legislation, so further restrictions may appear in legislation yet to be enacted. The Regulations must therefore be read in conjunction with other legislation, and the potential limits on private enterprises cannot yet be assessed.

Finally, enactment of legislation is not equivalent to enforcement — particularly in the PRC — and some problems will not prove easily resolved, despite the potentially severe penalties for violations. One reason is the general PRC approach to economic reform, in which

135. Dai, *Siyang Qiye You le 'Dingxinwan'* (Private Enterprises Are Reassured), RMRB-HB, July 2, 1988, at 3.

136. *Id.*

legislation often follows a period of experimentation rather than leading developments. When official policy towards the private economy was being formulated, private enterprises were subject to no formal or effective regulation: it was in every sense a lawless period for private enterprise. So it is hardly surprising that some enterprises are reluctant to comply with new rules; they have long since become accustomed to acting without supervision or principled control (as opposed to unauthorized harassment or pressure). It may also be difficult to induce local officials and cadres to recognize the legitimate status granted so late to the private sector.

Of course, some problems raised by private firms are complex and cannot easily be solved by this — or any other — legislation alone.¹³⁷ The Regulations, for example, specifically forbid the use of child labor, but that is only one of a long line of unsuccessful prohibitions of the practice.¹³⁸ Enforcement of that provision may only be possible when better educational opportunities and higher living standards can be provided to rural areas.

IV. CURRENT STATUS OF PRIVATE ENTERPRISES IN THE PRC

In retrospect, 1988-89 may well have been the high point of private enterprise development in the PRC. By spring 1989, the position of private enterprises and their future in the PRC seemed secure, at least during the "primary stage of socialism." The Constitution had been amended to legitimize their status, and by early 1989 there existed a body of law not only regulating them but also protecting their rights and interests.¹³⁹ A variety of popular handbooks explaining the new laws and handy collections of private

137. Trade unions were reportedly planned for private firms, in order to combat poor working conditions, the use of child labor and other such problems. Gao, *Unions Will Be Set Up in Private Firms Soon*, China Daily, Nov. 24, 1988, at 1. The first trade union in a private firm since 1949 was reportedly organized in Shenyang in April 1988. *Private Firm Gets First Trade Union*, China Daily, Apr. 29, 1988, at 3.

138. For example, Guoying Qiye Zhaoyong Gongren Zhanxing Guiding (Interim Provisions on Recruiting Workers in State Enterprises) art. 6 (promulgated July 12, 1986), in 1986 ZHONGHUA RENMIN GONGHEGUO FAGUI HUIBIAN (1986 Collection of Laws and Regulations of the PRC) 784 (1987) [hereinafter 1986 FAGUI HUIBIAN]; Zhonghua Renmin Gongheguo Yiwu Jiaoyu Fa (Compulsory Education Law of the PRC) art. 11 (adopted Apr. 12, 1986) 1986 FAGUI HUIBIAN, *id.* at 839; and Guanyu Yanjin Shiyong Ergong de Tongzhi (Circular Concerning the Strict Prohibition of the Employment of Child Labor) (issued Nov. 4, 1988), RMRB-HB, Nov. 5, 1988, at 4.

139. Not surprisingly, these economic and legal developments were being followed with some interest by scholars on Taiwan. See, e.g., Chen, *Private Economy in Mainland China: Its Development, Impact, and Limitations*, 24 ISSUES AND STUDIES, No.2, at 78 (1988).

enterprise statutes were published throughout the PRC.¹⁴⁰ The drafting of a "Private Enterprise Law," intended to constitute more permanent and general legislation than the Provisional Regulations, was also rumored.

Their legislative position reflected the continuing success of the private enterprises themselves as well as their favored status. Despite some setbacks, the private sector as a whole continued to prosper and, in areas like Wenzhou and Shishi, to dominate the local economy. Although characterized as only a "supplement" to the public sector, they actually constituted, in the eyes of many outside observers, the most dynamic, creative sector of the PRC's economy. At the same time the official press continued to highlight the positive role played by private enterprises,¹⁴¹ private entrepreneurs themselves were portrayed as respectable, even admirable, figures in news reports, stories and plays.¹⁴² Although the widely reported applications of two different millionaires for membership in the Communist Party aroused nationwide controversy, in the end at least one of the applicants proved successful — and a man for all intents and purposes a capitalist was admitted as a probationary member of the Party.¹⁴³ It is little wonder that such developments, unthinkable during other periods of the PRC's history, led some commentators to speak of the end of ideology.¹⁴⁴

140. Such as SIYING QIYE FALU ZHISHI, *supra* note 31; S. SUN & C. DAI, SIYING QIYE NASHUI ZHINAN (Guidebook to Private Enterprise Taxation) (1989); SIYING QIYE CHANGYONG FALU SHOUCE (Legal Handbook of Frequently Used Private Enterprise Laws) (1988); SIYING HE GETI JINGJI SHIYONG FAGUI DAQUAN (Complete Collection of Useful Laws and Regulations on the Private and Individual Economy) (1988).

141. *Private Sector Is "Significant,"* China Daily (Business Weekly), Sept. 19, 1988, at 3.

142. See, e.g., the story recounted by Zhang Baoning, a "self-made man" who also "enjoys a high social status." Zhang, *Going It Alone — An Account of a Private Entrepreneur*, BEIJING REV., Feb. 27- Mar. 5, 1989, at 19. See also, a play in which "a cripple, but also the richest self-employed worker . . . marries the prettiest girl in Beijing." *City Cowboy*, China Daily, Mar. 10, 1989, at 5. Zhu, *Bosses in Private Firms Regard Employers As "God,"* China Daily, Mar. 27, 1989, at 2.

143. Transport millionaire Liu Xigui's application touched off the controversy. Cheng, *China Asks If Millionaires Can Be Communists*, S. China Morning Post, Aug. 26, 1988, at 1. *Problem in a Million For the Party*, China Daily, Sept. 9, 1988, at 1. Xu Jizhu, whose Shenyang business was reportedly worth at least 8 million yuan and who employed 300 workers, was admitted as a probationary member of the Party, showing "that the Party encourages private business." See, *There Are Rich Communists, After All*, China Daily, Apr. 20, 1989, at 1. Cheng, *Communists Say Yes To Wealthy*, H.K. Standard, Apr. 20, 1989, at 1. Other self-employed businessmen (presumably not so rich) had already become party members: more than 200,000 of them, according to one source. Liang, *Business Lures Party Members*, China Daily, Mar. 11, 1989, at 3. But Liu Xigui's application was reportedly rejected for the third time in April, 1991. *Who Wants to Be a CCP Millionaire? . . . I Do*, S. China Morning Post, Apr. 20, 1991, at 1.

144. Gargan, *In China, Ideology's Role Disintegrates*, Int'l Herald Tribune, June 1, 1988,

A. 1989 Campaign Against Private Business¹⁴⁵

After June 4, 1989, however, the position of private enterprises underwent a dramatic change. With the fall of former Party leader Zhao Ziyang, an emphasis on central planning and public ownership seemingly replaced the liberal policies that had provided such a favorable environment for private sector growth. Already suffering to some extent as a result of austerity measures introduced in September 1988,¹⁴⁶ private enterprises (together with individual firms) were subjected to a severe campaign threatening their growth and — so it seemed at the time — their very existence. In general, private business was seen as being too closely associated with the discredited Zhao and his “extremist free-market policies,”¹⁴⁷ an economic manifestation of the political “bourgeois liberalism” under attack.¹⁴⁸ But the specific accusations, which appeared almost daily in the official press, included profiteering and cheating the people, tax evasion and (as a consequence) causing serious income disparities to reappear in the PRC.

At the end of July 1989, the State Administration for Industry and Commerce issued a circular calling for a thorough rectification and inspection of private and individual businesses by its departments at all levels. The campaign was directed against a broad range of illegal operations, including illegally selling and reselling the means of production and durable goods in short supply; selling false, harmful or poisonous products; forcing others to buy or sell commodities to drive up prices; printing or selling reactionary or pornographic materials; and engaging in speculation and profiteering. At the same time, all departments and bureaus were ordered to investigate private and individual enterprises registered as collectives or engaged in unregis-

at 1.

145. An earlier and shorter version of this section appeared in Conner, *Private Sector Shrinking Under Intense Criticism and Increasing Controls*, E. ASIAN EXEC. REP., Dec. 15, 1989, at 10.

146. Faison, *China Pulls in the Reins*, S. China Morning Post, Nov. 15, 1988, at 29; Kristof, *China Moves to Cut Wildfire Growth as Economy Overheats*, Int'l Herald Tribune, Mar. 22, 1989, at 2.

147. *Zhi You Shehuizhuyi cai Neng Fazhan Zhongguo* (Only If There Is Socialism Can China Develop), RMRB, July 22, 1989, at 1. *Disgraced Zhao Cast as Chief Culprit*, S. China Morning Post, July 29, 1989, at 8.

148. Encouraging the private sector and suppressing the development of the state sector was identified as one of twelve areas in which bourgeois liberalization had taken an economic form. R. Delfs, *To Your Left March*, FAR E. ECON. REV., Aug. 31, 1989, at 8, 9. *Diplomats Fear End of Open Policy*, S. China Morning Post, June 14, 1989, at 1; *Storm Clouds Gather Over Mainland's Private Firms*, S. China Morning Post, July 15, 1989, at 4; Butterfield, *In China, Rich Are Cautious*, Int'l Herald Tribune, July 17, 1989, at 2.

tered business operations. Enterprises found to be in violation of the regulations were to be reformed or shut down.¹⁴⁹

In August 1989, the State Taxation Bureau announced a twomonth campaign to detect tax evasion by private and individual business.¹⁵⁰ The bureau also issued a circular detailing procedures for rectifying the tax order in individual firms, which was applied by analogy to private enterprises as well.¹⁵¹ In September 1989, the State Council issued a decision intended to improve tax collection procedures for private enterprises, since it was alleged that seventy to eighty percent of such firms were evading taxes. For the most part, the State Council decision restated or reaffirmed earlier requirements, such as timely registration with the tax authorities and the keeping of proper records.¹⁵² The campaign against private enterprise reached its peak during August and September, but for months afterward the official press continued to carry reports on stepped-up inspection and tax collection efforts directed against the private and individual economies.¹⁵³

Given the previous lack of effective regulation and some glaring instances of illegal operations, some "rectification" of the PRC's

149. *Guojia Dui Geti Gongshanghu Siying Qiye Jiaqiang Jiandu Guanli* (State Improves Supervision and Regulation of Industrial and Commercial Individual Household Firms and Private Enterprises), RMRB, July 30, 1989, at 2; *Dui Geti Gongshanghu he Siying Qiye Jiaqiang Guanli* (Supervision Over Industrial and Commercial Individual Household Firms and Private Enterprises Needs to be Improved), Fazhi Ribao, Aug. 1, 1989, at 1. All sorts of business were investigated, including bars, bookstores and publishers. *Private Sector Drops Calls for New Ways*, China Daily, Oct. 30, 1989, at 4; *Shanghai Cleans up Privately Owned Bars*, China Daily (Shanghai Focus), July 17, 1989, at II; *Ban on Works by Liberals Ordered*, S. China Morning Post, July 5, 1989, at 11.

150. *Geti Gongshanghu Toushui Loushui Yanzhong, Shuiwu Bumen Jueding Kaizhan Shuishou Jiancha* (Massive Tax Evasion by Individual Industrial and Commercial Household Firms Leads to Inspection by Tax Departments), RMRB, Aug. 2, 1989, at 1; *Dui Geti Gongshanghu he Siying Qiye Jiaqiang Guanli* (Supervision of Individual Industrial and Commercial Household Firms and Private Enterprises Needs to be Strengthened), Fazhi Ribao, Aug. 1, 1989, at 1. They had already been criticized for tax evasion even before the formal campaign opened. *Dangqian Getihu Touloushui Qingkuang Shifen Yanzhong* (Tax Evasion by Individual Household Firms Is Now Very Serious), Jingji Ribao, July 10, 1989, at 1; *Jiaqiang Geti Shuishou Ke Burong Huan* (Improving Taxation of Individual Firms Brooks No Delay), Jingji Ribao, July 11, 1989, at 1.

151. *Quanguo Jiang Kaizhan Geti Shuishou Zhixu Da Jiancha* (Nationwide Inspection of the Taxation of Individual Households Soon to be Launched), Jingji Ribao, Aug. 2, 1989, at 1.

152. *Jiaqiang Geti Gongshanghu Siying Qiye Shuishou Zhengguan Gongzuo* (Improving Tax Collection from Industrial and Commercial Individual Household Firms and Private Enterprises), RMRB, Sept. 3, 1989, at 1.

153. The reports appeared virtually every day in the official press. See, e.g., *City Begins Campaign on Private Business*, China Daily (Shanghai Focus), July 17, 1989, at II. Crothall, *Stiff Penalties for Shanghai Tax Evaders*, S. China Morning Post, Sept. 12, 1989, at 10.

private sector was undoubtedly in order. But the government campaign during those months of 1989 went far beyond such remedial measures, and the tone of the official accusations remained shrill. Private and individual entrepreneurs also complained of being compelled to pay exorbitant fees for necessary services and of other forms of harassment;¹⁵⁴ they were also (like state workers) reportedly forced to buy government bonds to help fund the PRC's budget deficit.¹⁵⁵

B. Broader Criticism and New Policy

In the months that followed, the private sector also became the target of much broader criticism. Party General Secretary Jiang Zemin, for example, repeatedly accused private entrepreneurs of profiteering, cheating and taking advantage of the people,¹⁵⁶ implying that they had become rich primarily through tax evasion and other illegal activities. The resulting "unequal distribution" (*fenpei bugong*) of income and property was frequently highlighted as a serious social problem.¹⁵⁷ For that reason, Jiang also declared that exploiters (i.e., private entrepreneurs) should not be permitted to join the Communist Party. In October 1989, a Party order instructing local branches not to admit heads of private enterprises as Party members was reportedly being circulated, together with draft rules restricting the activities of any private business owners who had already gained admission.¹⁵⁸

154. *Beijing Businesses 'Bust'*, Target (Hong Kong), Oct. 3, 1989, at 1-2.

155. *Entrepreneurs Are Forced to Fund Chinese Deficit*, Int'l Herald Tribune, Nov. 6, 1989, at 17.

156. See, e.g., Jiang, *Eliminate Unfair Income Distribution*, BEIJING REV., Aug. 28-Sept. 3, 1989, at 15.

157. See, e.g., *Getihu Daodi Zhuan Duoshao Qian* (How Much Money Do Individual Household Businesses Make After All?), RMRB, July 23, 1989, at 5. *Enrichment of Few Criticised*, S. China Morning Post, June 27, 1989, at 9; *Jiang Emphasizes Leading Role of the Working Class*, China Daily, July 27, 1989, at 1; *Bosses Paid Too Much, Paper Says*, China Daily, July 26, 1989, at 3; Wu, *Jiang Pledge on Unfair Wages*, H.K. Standard, July 28, 1989, at 1; *Private Business People Criticized in Beijing Report*, China Daily (Business Weekly), July 31, 1989, at 1; *Getihu "Facai" Tanmi* (Greedy Fortune-Hunting Individual Household Businesses), RMRB, Sept. 2, 1989, at 6; *Dui "Fenpei Bugong" de Yilun* (Comment on Unfair Distribution), Jingji Ribao, Aug. 13, 1989, at 2. The contrast with the approach taken earlier is striking. See, e.g., Liu, *Socialism Is Not Egalitarianism*, BEIJING REV., Sept. 28, 1987, at 16, which argued for "distribution according to work" rather than the old egalitarianism. "Since managers of private businesses perform more complex labour, they deserve higher remuneration. This accords with distribution according to work." *Id.* at 18.

158. *Party Ruling Bars Private Businessmen*, S. China Morning Post, Oct. 2, 1989, at 1; *Entrepreneurs Barred from CCP in Peking*, China News (Taipei), Nov. 26, 1989, at 1. Presumably that order is the "Circular of the Central Party Committee Relating to Strengthening Party Construction" (Zhonggong Zhongyang Guanyu Jiaqiang Dang de Jianshe de Tongzhi),

The next month, the Beijing Party Secretary announced that heads of private companies and entrepreneurs who exploited their employees would be excluded from Party membership in the capital.¹⁵⁹

From the beginning of the campaign, top Party and government leaders reiterated the official line on the private economy in their speeches. Superficially a continuation of past policy (protecting entrepreneurs' lawful rights while controlling their unlawful activities), post-June 4 pronouncements in fact took on a tougher cast. Jiang Zemin's conservative National Day speech, for example, contained one of the most detailed discussions of private enterprise appearing during that time. The PRC's policy towards the private and individual sectors, he stated, was "first, to encourage their active development within the limits specified by the state; and second, to strengthen supervision and guidance over them by economic, administrative and legal means so as to give full play to their positive role and also restrict their negative aspects harmful to socialist economic development."¹⁶⁰

Jiang's speech allowed some scope for the "development of diverse economic sectors" in a supplementary role, since they were still important "for the development of social production, for bringing more convenience into the people's lives and for the creation of more jobs." But he clearly reaffirmed the primacy of the public sector of the economy, and he returned to the theme of social and economic problems resulting from "unfair social distribution" and the "phenomenon of unbridled profiteering" (both clear references to private

referred to without citation in DANGJIAN XIANSHI YINAN WENTI JIEDA (Answers to Actual Difficult Questions on Party Construction) 175 (Z. Li, L. Zhang, Z. Ma & G. Wang, eds., 1990). According to the circular, the heads of private enterprises could not be admitted to the Party because "the relationship actually existing between the private enterprise owners and their workers is one of exploiter and exploited." *Id.*

As the editors explained, there were essentially four reasons for the ban on admitting private entrepreneurs. First, admitting them to the Party would be antagonistic to the Party's goal of struggle, since only those who engage in labor and do not exploit the labor of others may join. Second, admitting private entrepreneurs would be in conflict with the Party's essential nature: the Party's class character is proletarian, but private owners are still by nature private capitalists who exploit the labor of others. Third, admitting them would deviate from the Party's objective, which is to serve the proletariat, since the aim of private entrepreneurs is to obtain profits. Fourth, permitting them to join the Party would contradict the advanced nature of Party personnel, who work for the benefit of the state and the people, whereas private owners exploit others to get rich. *Id.* at 176-178. But that reasoning would not necessarily apply to individual household operators; no rules prevent them from joining the Party if they meet the necessary qualifications. *Id.* at 180-181. I am grateful to Albert Chen for calling this work to my attention.

159. China News (Taipei), Nov. 26, 1989, at 1.

160. Jiang Zemin Zongshuji de Jianghua (Speech by General Secretary Jiang Zemin) (presented Sept. 29, 1989), RMRB, Sept. 30, 1989, at 1-2.

businesses and entrepreneurs).¹⁶¹

Other Party and government leaders followed Jiang's lead when describing official policy towards the private sector. At the press conference held by the Politburo Standing Committee in September 1989, Vice-Premier Yao Yilin referred to its beneficial supplementary role, but he also stated that the government would "restrict its negative aspects harmful to the national economy and the people's livelihood" and "strengthen supervision and guidance" over private business.¹⁶² In an October 1989 speech, Premier Li Peng echoed the necessity for a "correct policy" towards individual and private business, which meant that "[i]ts legal operations must be given protection and those that are illegal must be suppressed; and they must strictly pay taxes according to regulations. We must give play to their positive role and restrict their negative aspects."¹⁶³

According to some commentators, a meeting of provincial and municipal directors of industry and commerce administrations held later in October took a more positive view of the private economy.¹⁶⁴ But Ren Zhonglin, director of the State Administration for Industry and Commerce, seems only to have repeated the standard formula.¹⁶⁵ Nor did the communique issued by the Communist Party Central Committee at the close of its Fifth Plenum in November 1989 offer much comfort to private enterprise. While no positive restrictions were announced (in fact, no direct reference was made to the private sector), the general emphasis of the communique continued to be on economic retrenchment rather than reform.¹⁶⁶

The tone of the Fifth Plenum's thirty-nine point decision, when it was finally made public in January 1990,¹⁶⁷ varied little from earlier

161. *Id.*

162. *Jiang Zemin Zongshuji he Zhongyang Zhengzhiju Changwei Da Zhongwai Jizhe Wen* (General Secretary Jiang Zemin and Members of the Standing Committee of the Central Politburo Answer Questions from Foreign and Chinese Journalists), *Fazhi Ribao*, Sept. 27, 1989, at 1.

163. *Jingji Xingshi Chaozhe Yuding Fangxiang Fazhan Dangqian Bixu Renzhen Gaohao Zhili Zhengdun* (Economic Situation Moves Towards Predetermined Direction; At Present Rectification and Consolidation Must Be Implemented Well), *RMRB*, Oct. 13, 1989, at 1.

164. Faison, *Senior Official Defends Role of Private Firms*, *S. China Morning Post*, Oct. 23, 1989, at 9; *Private Businesses Still Need Protection*, *China Daily*, Oct. 23, 1989, at 1.

165. *Dui Geti Jingji Yao Zhengque Yindao Jiaqiang Guanli* (Correct Guidance and Improved Regulation of the Individual Economy Are Needed), *RMRB*, Oct. 22, 1989, at 1.

166. *Zhonggong Shisanjie Wuzhong Quanhui Zaijing Juxing* (Fifth Plenary Meeting of the Thirteenth Session of the Chinese Communist Party Convened in Beijing), *RMRB*, Nov. 10, 1989, at 1.

167. *Zhonggong Zhongyang Guanyu Jinyibu Zhili Zhengdun he Shenhua Gai ge de Jueding* (Decision On Further Improving the Economic Environment, Straightening Out the Economic

pronouncements. Thus, the individual and private sectors were characterized as "a helpful and necessary supplement to the socialist economy;" but at the same time, "better supervision and guidance should be provided through economic, administrative and legal means to encourage their development within the scope prescribed by the state," and the "negative aspects" of the two sectors should be restricted.¹⁶⁸ The November decision reaffirmed the "role of big and medium-sized state-run industries as the backbone of the national economy" and specifically barred individuals from engaging in certain activities, including the coal business and trade in "other important means of production," all forms of long-distance wholesale trade and wholesale operations in important consumer products.¹⁶⁹ Moreover, the decision again raised the problem of income disparity: the solution was to "gradually alleviate the contradiction arising from an unfair distribution of social wealth," with concrete measures to strengthen supervision over the incomes of private and individual businessmen, among others.¹⁷⁰

C. Reasons for the Campaign

Why was such an intense campaign conducted against private business? Some Party members have, no doubt, consistently opposed the growth of the private sector on ideological grounds: since private enterprises involve hired labor and private ownership of the means of production, they are virtually indistinguishable from capitalist businesses and therefore have no place in a socialist society. Even the great success and productivity of such enterprises has failed to win them high marks with conservatives, since it can result in competition with state enterprises for resources and markets rather than a truly supplementary role.

After June 4, 1989, however, all forms of private business came to be seen as linked, either directly or indirectly, to the "counterrevolutionary rebellion" of spring 1989. Previous articles supporting private enterprise and further "privatization" measures were criticized for providing the ideological foundation for the "turmoil." In addition,

Order and Deepening the Reforms) (adopted Nov. 9, 1989 at the Fifth Plenum of the 13th Central Committee of the Communist Party), reprinted in RMRB, Jan. 17, 1990, at 1-3 [hereinafter the 1989 Decision].

168. *Id.*

169. *Id.*

170. *Id.* art. 13.

some private and individual businesses reportedly aided the student movement even more directly, through the donation of money and supplies.¹⁷¹ Party leaders apparently recognized the potential connection between economic and political liberalization,¹⁷² and the harsh tone of their accusations is partly attributable to a desire to punish the offending organizations and control their dangerous tendencies. (The surest way to eliminate bourgeois liberalism must be to prevent the (re)appearance of a bourgeoisie.)¹⁷³ Accusations of profiteering and tax evasion also served to deflect popular anger over official privilege and corruption, by playing on real popular resentment of income disparities, which had never entirely disappeared.¹⁷⁴ The ideological

171. For the best-known example, the Stone Company (though not strictly speaking a private firm), was reported to have aided the student demonstrators with donations and moral support during the protests at Tiananmen Square. The government claimed that then company president Wang Runnan donated 200,000 yuan to the student movement, and the authorities therefore launched an attack on him. Ye, *Wang Runnan Banqi "Shitou" Yao Za Shei* (Whom Does Wan Runnan Want to Hit with His "Stone"?), RMRB, Aug. 17, 1989, at 1. Abrams, *Mainland Computer Firm Bounces Back After June Unrest*, China News (Taipei), Dec. 16, 1989, at 3. Many small businesses in the Chinese capital are also believed to have supported the students financially or otherwise. Kristof, *Democracy is Again Flowering in China*, Int'l Herald Tribune, Feb. 22, 1989, at 2.

172. One theorist charged that media articles propagating private enterprise had contributed to the "counter-revolutionary rebellion." Zhou, *Jingji Siyouthua de Xuanchuan Shi Zichanjieji Ziyouthua Fanlan de Zucheng Bufen* (Propaganda about Privatization of the Economy Is an Integral Part of the Inundation of Bourgeois Liberalization), Guangming Ribao, July 4, 1989, at 2.

173. Fang Lizhi is reported to have spoken of a new class of business entrepreneurs, who supported the 1989 pro-democracy movement and helped to finance it. Kristof, *supra* note 171. The treatment of dissidents since the Beijing massacre, in particular the thirteen-year sentences meted out to Wang Jintao and Chen Ziming, seem to bear him out. See, McGregor, *China Gives Two Dissidents Stiff Sentences*, Asian Wall St. J., Feb. 13, 1991, at 1. Both Wang and Chen channeled funds earned from various enterprises into political activity, including donations supporting the students. See the excellent report prepared by ASIA WATCH, *Rough Justice in Beijing*, News From Asia Watch, Jan. 27, 1991, for a detailed discussion of their activities. According to a Chinese sociologist, however, individual and private enterprise owners "have not yet and are not likely to become a new middle class." That is because they are still related to their original proletarian class and they support party leadership. So they should not fear that they will be labeled as "bourgeoisie." *No Middle Class Emerging in China*, China Daily, Jan. 26, 1990, at 4.

174. See *Income Differences Cause Resentment*, China Daily, May 28, 1988, at 4; *Discontent Over Wealth Distribution*, S. China Morning Post, Sept. 2, 1988, at 9. According to a 1988 survey, the second main complaint of urban residents — after corruption by officials — was that "reforms have enabled dishonest traders to become upstarts"; the third complaint was income differences. *Corruption by Officials Rankles in Cities*, China Daily, June 25, 1988, at 4. One Western academic has also stressed the common negative attitudes expressed towards individual and private firms he found during discussions and interviews in China. Gold, *Guerilla Interviewing Among the Getihu*, in UNOFFICIAL CHINA: POPULAR CULTURE IN THE PEOPLE'S REPUBLIC OF CHINA (P. Link, R. Madsen & P. Pickowitz eds., 1989).

weakness of the private economy's position made it an ideal scapegoat as well as a much easier target for conservatives than foreign business and investors.

The campaign's specific areas of focus tend to support this interpretation. Before the enactment of legislation, serious problems raised by private enterprise were discussed at length, but they were not necessarily resurrected during the campaign. The exploitation of workers by private employers has always been the most sensitive issue, for example, and much could still be made of the poor working conditions in many private enterprises — yet that issue did not figure, at least directly, in the charges most frequently leveled against them in the summer and fall of 1989. Instead the campaign concentrated on their alleged bad practices and the resulting income disparities, leading one to speculate that the real purpose was to deflect criticism from widespread Party and government corruption.

Finally, of course, the campaign against tax evasion produced increased and much needed revenue for the PRC government. According to official reports, the individual and private sector paid more than 13 billion *yuan* in taxes to the central government in 1989, and in the first half of 1990 had already paid 6.65 billion *yuan*, 26.5% more than in the same period the year before.¹⁷⁵ Much of the growth in government revenue during that period was apparently due to the crackdown on private enterprise.¹⁷⁶

D. Moderation of the Anti-Private Sector Policy

After the harsh campaign launched against private enterprise, official policy appeared to change course yet again in late 1989. In December, the editors of the People's Daily declared in a front-page article that "the policy established at the 1978 Third Plenary Session [permitting the development of the private sector] has definitely not changed." According to the editors, the government had never formulated a policy of non-interference towards private enterprise, so the necessary strengthening of supervision and guidance over that sector represented the implementation and perfection of — and not a change in — policy.¹⁷⁷ Nevertheless, that article, like others in the

175. Li, *Steps Taken to Protect Private Business*, China Daily, Aug. 11, 1990, at 1.

176. *Crackdown Makes Tax Coffers Swell*, China Daily, Oct. 26, 1989, at 3.

177. *Id.* Similar articles appeared in other newspapers; see, e.g., *No Policy Change Sought for Private Enterprises*, China Daily, Dec. 8, 1989, at 4; Zhang, *Keeping Private Business On the Right Track*, BEIJING REV., Jan. 22-28, 1990, at 7; Li, *Backing for Private Sector Will*

same vein, was widely taken as a sign that official policy had in fact been reversed, and that private enterprises would not only survive but might even receive further encouragement from the central leadership.¹⁷⁸

An analysis of reports and statements relating to the private sector and general economic policy appears to bear out that interpretation. Although the same formula continued to be repeated, more positive reports on the beneficial activities of private enterprises, which had simply vanished during the campaign, resurfaced in the official press. Private businesses were once again described as an "indispensable supplement to the socialist economy" and lauded for their contributions to socialism.¹⁷⁹ In a November 1990 interview with *Izvestia* reporters, State Council spokesman Yuan Mu restated the policy towards private enterprise: while reiterating that China will not replace public with private ownership, he also declared that the private sector would be allowed as a beneficial supplement to the public sector. In the context of the apparently more pro-reform tone to his remarks, the private economy appeared to be receiving more positive support than it had for some time.¹⁸⁰

The reasons for the revival of private enterprise were identical to those originally advanced in its support: high productivity, the provision of needed services, and above all (since rising unemployment could prove destabilizing), the creation of jobs. The situation was serious: in May 1990, the government acknowledged that the unemployment rate for the year might exceed four percent, higher than the previous year, with some eleven million people unemployed.¹⁸¹ The

Continue, China Daily, Mar. 9, 1990, at 1; *No Policy Change on Private Sector*, China Daily, Mar. 15, 1990, at 4.

178. See, e.g., Lam, *Leaders Give Boost to Private Sector*, S. China Morning Post, Jan. 5, 1990, at 12; *Private Sector on M'land to be Allowed to Survive*, China News (Taipei), Dec. 7, 1989, at 2.

179. *Individual Enterprises in Spotlight*, China Daily, May 11, 1990, at 4; *Private Economy Contributes to Socialism*, China Daily, June 16, 1990, at 4; Li, *Steps Taken to Protect Private Business*, China Daily, Aug. 17, 1990, at 1; Liu, *Private Enterprise Plays Lead Role in Promoting Economy*, China Daily, Nov. 19, 1990, at 1; Li, *Private Business Contribution Praised*, H.K. Standard, Feb. 22, 1991, at 11.

180. His statements were reported in Yuan: *Success Relies on Reforms and Socialism*, China Daily, Nov. 19, 1990, at 4; and Yuan *Expands on Economic Course*, China Daily, Nov. 20, 1990, at 4.

181. Gu, *11 Million Are Waiting for Jobs This Year*, China Daily, May 19, 1990, at 1; Xiao, *Job Creation a Vital Concern*, China Daily, June 13, 1990, at 1. But Western and unofficial Chinese sources agree that the official figures are understated, and that the true number of unemployed may be as high as 20 to 30 million in the cities and around 120 million in the countryside. *China Facing Worst Unemployment Crisis*, S. China Morning Post (Business

job shortage was made more difficult because many private and individual firms had been forced to close or to lay off employees during the 1989 campaign against them.¹⁸² Nevertheless, one solution commonly proposed was increased job creation by a revived and possibly expanded private sector.¹⁸³

A more definitive statement of policy on private enterprise might have been expected from the Seventh Plenum of the Communist Party Central Committee, which met in late December 1990 after months of delay. The plenum's initial communique¹⁸⁴ proved inconclusive, however: while endorsing the "scientific conclusion that China is in the primary stage of socialism," it failed to mention the private sector.¹⁸⁵ The full proposals for the Eighth Five-Year Plan (1991 — 1995) and the Ten-Year Economic Program (1991 — 2000),¹⁸⁶ released at the end of January 1991, generally appeared to emphasize central planning and the role of state enterprises. While the proposals provided some

Post), Sept. 15, 1990, at 1.

182. *More Jobs Urged for Surplus Labour*, China Daily, Jan. 23, 1990, at 4; Li, *Officials Urged to Help Urban Employment*, China Daily, Apr. 19, 1990, at 1. Just how many private and individual firms were forced to close as a result of the campaign (and austerity measures) is difficult to say. According to official reports, the number of individual businesses fell by more than fifteen percent during 1989 — although a spokesman for the State Administration for Industry and Commerce maintained that the decrease had nothing to do with the state's policies. Ma, *Private Businesses Face Decline for the First Time*, China Daily, Aug. 11, 1989, at 1. No comparable statistics have been reported for private enterprises, although there were said to be 88,636 private enterprises as of June 1990, and 98,000 private enterprises in urban areas at the end of 1990. Zhao, *Diverse Ownership An Economic Must*, China Daily, Dec. 3, 1990, at 4; Xie, *Steady Growth Seen for Private Sector*, China Daily, Jan. 29, 1991, at 1; *Woguo Geti Siying Jingji Zhubu Huisheng* (Our Country's Individual and Private Economy Is Gradually Reviving), RMRB, Mar. 11, 1991, at 1. There was no suggestion as to how these figures should be reconciled with the former official estimates: 225,000 (including some 110,000 registered as collectives or cooperatives). See Ren, *supra* note 32, at 18.

183. Gu, *Labour Influx to Cities Will Be Cut by the State*, China Daily, Dec. 21, 1989, at 1; Zhang, *Measures Proposed to Increase Jobs*, China Daily, Apr. 18, 1990, at 4; *Peking to Tap Private Sector to Ease Unemployment Problem*, China Post (Taipei), Apr. 20, 1990, at 5; Nip, *15 Million New Jobs Needed*, H.K. Standard, Oct. 19, 1990, at 10; Tan, *Non-State Sector is Future Labour Pool*, China Daily, Nov. 28, 1990, at 4; Li, *China to Hold Urban Jobless Rate at 3.5%*, China Daily, Dec. 11, 1990, at 1.

As of this writing (February 1991), therefore, it appears that the private economy has made a comeback, for much the same reasons that led to its appearance after 1978: rising unemployment and the low productivity of state enterprises.

184. RMRB, Dec. 31, 1990, at 1-2.

185. *Id.* The primary stage of socialism conclusion was, however, attributed to the 1978 meeting, not to Zhao Ziyang's 1987 Report, *supra* note 66.

186. Zhonggong Zhongyang Guanyu Zhiding Guomin he Shehui Fazhan Shinian Guihua he "Bawu" Jihua de Jianyi (Proposals of the Communist Party Central Committee Relating to Formulating the Ten-year Program and the Eighth Five-year Plan for National Economic and Social Development), *reprinted in* RMRB, Jan. 29, 1991, at 1-4.

support for an "ownership structure embracing diverse economic sectors" that could "bring into play the supplementary role of the individual, private and other economic sectors," it was only those "beneficial to the public sector of the economy," and it would still be necessary to "administer and guide them in a better way."¹⁸⁷ Moreover, although some people and areas would be allowed to get rich first through "honest labor and lawful business operations," they were to be encouraged to help those who lagged behind.¹⁸⁸

V. THE FUTURE OF PRIVATE ENTERPRISE

Despite the ritualized statements that the PRC's private enterprise policy "has never varied" or that it "cannot be changed," the policy has in fact fluctuated greatly during the last two to three years alone. Official pronouncements on the private economy obviously must reflect shifts in political and economic policy as well as continued disagreements among the top leadership. If that is the case, what future do private enterprises have in the PRC? Prediction is risky, but some educated guesses may be hazarded.

First, it is highly unlikely that the private sector's role in the economy will be eliminated, nor does this appear to be the intention of the present leadership. The official formula still provides scope for the private economy, so long as it remains subordinate to the state sector. Furthermore, in practice, both private and individual enterprises continue to supply employment opportunities and services the state cannot provide, as well as additional tax revenue for the central government. The continued lackluster (even dismal) performance of state enterprises only serves to highlight the highly productive private and collective sectors in the PRC.¹⁸⁹ In particular, the reported rise

187. *Id.* art. 4.

188. *Id.* Overall, the tone of these proposals was in stark contrast to the 1984 Decision and Zhao's 1987 Report. Lam, *Backtracking on Zhao's Blueprint*, S. China Morning Post, Feb. 6, 1991, at 19.

189. As of the end of 1989, the state sector's share of the PRC's total industrial output fell to 56.1%, its lowest share since nationalization of private firms in the 1950s. Collective enterprises produced the greatest share of the non-state output, but private enterprise and joint ventures together produced 6%. Zhao, *supra* note 182; see also Delfs, *The Long, Long Road Back*, FAR E. ECON. REV., Aug. 23, 1990, at 38. Industrial recovery during 1990 was also reportedly being led by the non-state sectors, including the private sector. Cheung, *Planning a Comeback*, FAR E. ECON. REV., Oct. 25, 1990, at 56. State enterprises, on the other hand, reported record losses in 1990, with about 30% of all state enterprises posting losses. Zhang, *Chinese See Upturn in Standard of Living*, China Daily, Feb. 23, 1991, at 1; Kohut, - *State-Owned Firms Post Record Loss*, S. China Morning Post, Feb. 23, 1991, at 1.

in unemployment figures guarantees some role for the private sector, at least to the extent that rural collective enterprises cannot absorb China's surplus labor.

Nevertheless, it is quite possible that the sector's rapid growth is over, at least while the current leadership remains in power. The reliance on central planning rather than market forces and local control, the policy of providing state enterprises primary access to materials and continuing austerity measures¹⁹⁰ will make it difficult for the private economy to expand as quickly as before. Specific measures taken against private business, together with increased harassment and criticism of those engaged in private business, hardly provide an encouraging environment for future growth. Moreover, the campaign against the private sector has arguably undermined the legal position so recently granted to it.

It is also possible that further official measures might be taken against private enterprises. According to earlier reports, the PRC government has considered and may adopt a plan to restructure the private economy as a whole, and the State Council has reportedly prepared regulations specifying the scope of permissible business for the private sector, which would not include finance, foreign trade, the military, real estate, railways or ocean shipping.¹⁹¹ There might, therefore, be attempts to limit the role of private firms in the economy by confining their business to smaller service and retail operations.¹⁹² It has been suggested that private businesses should primarily be involved in food and drink, repair work, handicrafts and service industries (which are not profitable for state and collective enterprises), as opposed to transportation and commercial or manufacturing areas (where the largest private enterprises have been concentrated).¹⁹³ Indeed, limitations of that sort were recommended in the Fifth Plenum decision adopted in November 1989.

190. Austerity measures are scheduled to last at least another year, according to a statement made by Premier Li Peng at the close of the national planning conference held in December 1990. *Harsh Policy for Economy 'Must Go On'*, S. China Morning Post, Dec. 3, 1990, at 12. The 1989 communique, *supra* note 167, had suggested that such measures would continue for another three years.

191. *Program to Hit Private Sector*, S. China Morning Post, Nov. 13, 1989, at 9; *Life Looks Up for Private Business Sector*, China Daily, Apr. 9, 1990, at 1.

192. Shanghai authorities wish to encourage private sector involvement in export, processing and high technology. Liu, *Private Enterprise Plays Lead Role in Promoting Economy*, China Daily, Nov. 19, 1990, at 1. In any event, there have been calls for clearer guidelines specifying the permissible scope of business for the private and individual sector. *Private Economy Contributes to Socialism*, China Daily, June 16, 1990, at 4.

193. Li, *State to Set Private Businesses Straight*, China Daily, Nov. 7, 1989, at 1.

New rules might also be issued to limit the capital of private enterprises and the number of workers they may employ, as well as their fields of operation. Private enterprise legislation has so far failed to include such restrictions, but a number were mooted during the drafting of the Regulations, and those restrictions might therefore reappear. "Unequal distribution" — by now a code word for private enterprise earnings or profits — has continued to be an issue,¹⁹⁴ so further tax and income limitation measures might also be enacted.¹⁹⁵ Greater attempts to control the employment of underaged workers or other labor abuses will also probably be made.¹⁹⁶ In any event, whether such measures take the form of new regulations or new statements of policy is immaterial: policy made private enterprises long before legislation was enacted, and it can just as easily break them.

VI. CONCLUSION

Private enterprise is now subject to the most extensive legislation since the PRC's founding in 1949; if implemented, it would provide a reasonable framework for the regulation of private business in China. But as post-June 4 events (and the earlier history of private enterprise) have amply demonstrated, the role of policy is still crucial; recent legislation must therefore be read in conjunction with official statements on economic reform in general and private business in particular.

Yet the picture for the private sector is no longer as bleak as it appeared in 1989. As in the past, private enterprise has demonstrated an ability to bounce back under a more moderate policy, and areas like

194. Some articles are intended to explain income disparities: private businessmen must work hard and take risks, and not all make large profits, for example. *Is Income Deal for Self-Employed Fair?*, China Daily, May 28, 1990 at 4. But others continue to view such unequal distribution as a serious problem and a potential cause of social disorder. *Income Disparity More of a Problem*, China Daily, Aug. 13, 1990, at 4; *Wage Gap Danger to Stability*, S. China Morning Post, Aug. 22, 1990, at 8.

195. It is still a common perception that the self-employed do not pay their share of taxes and that some continue to earn illegal incomes — both situations that must be controlled. *Unfair Income Gaps Dampen People's Zeal*, China Daily, Mar. 2, 1990, at 4. Limitations on the salaries of collective enterprise managers were also announced in late 1990; see *Jiaqiang Chengzhen Jiti Qiye Zhigong Gongzishouru Guanli* (Improving Salary Management of Employees of Collectives in Cities and Townships), RMRB, Nov. 5, 1990, at 2.

196. The State Council has for some time been considering regulations providing further sanctions for the employment of those under sixteen, chiefly directed at private and individual businesses. Gu, *Action Planned to End Hiring of Child Labour*, China Daily, July 27, 1990, at 1. In April 1991, the State Council promulgated the Jinzhi Shiyong Tonggong Guiding (Provisions Prohibiting the Use of Child Labor), reprinted in Fazhi Ribao, May 5, 1991, at 2.

Shishi and Wenzhou, where private businesses have constituted the strongest, even dominant, sector of the local economy, have by many accounts suffered little lasting damage from the latest campaign.¹⁹⁷ These and other similar developments suggest that local governments may increasingly be willing to ignore central policy if it seems in their economic interest to do so.¹⁹⁸ Further attempts to constrict the private economy may therefore have less effect: even in China, it will almost certainly prove impossible to get the genie back in the bottle.

197. According to the director of the Wenzhou municipal planning commission, as stated in a Hong Kong interview in December 1989. Kwan, *Wenzhou Firms 'Not Hit Badly' by Austerity*, S. China Morning Post, Dec. 14, 1989, at 15. Other reports indicate the city was more seriously affected, however. Wilhelm, *Capitalist Tail Cut Off*, H.K. Standard, Mar. 23, 1990, at 15. Kohut, *Fujian's Stone Lion Does a Roaring Trade*, S. China Morning Post, Sept. 7, 1989, at 24; Kristof, *Dispatches From a Chinese Frontier of Capitalism*, N.Y. Times, Aug. 15, 1989, at 4. In Guangdong, private and individual businesses are also reportedly booming again, with almost one million registered. Huang, *Sudden Rise in Business Registrations*, H.K. Standard, May 23, 1991, at 6.

198. Kristof, *For Chinese, a Hopelessness Replaces Fear of Crackdown*, Int'l. Herald Tribune, Nov. 26, 1990, at 2. Provincial leaders seem especially likely to resist recentralization when private and collective enterprises have undergone rapid development in their areas. See "Yan Shi" [pseud.], *Provinces Hold Key to Reform*, FAR E. ECON. REV., Dec. 27, 1990, at 16.

APPENDIX

Implementing Measures for the Provisional Regulations of the People's Republic of China Concerning Private Enterprises

Article 1

These Implementing Measures are enacted in accordance with the provisions of Article 47 of the "Provisional Regulations of the People's Republic of China Concerning Private Enterprises" (referred to below as the "Regulations").

Article 2

Private enterprise "employees" as provided in Article 2 of the Regulations means personnel, other than the investors, who have accepted employment in the enterprise.

Article 3

Among the personnel listed in Article 11 of the Regulations:

- (1) "rural residents" refers to individual peasants and does not include residents in rural areas who are not engaged in agriculture.
- (2) "persons waiting for employment in cities and towns" includes youth waiting for employment and other persons without jobs in cities and towns.
- (3) "operators of individual industrial and commercial households" refers to the proprietors of individual industrial and commercial households, including partners in individual partnerships.
- (4) "personnel who have resigned or quit their jobs" means personnel who have resigned or quit their jobs at (government) offices, associations, enterprises and institutions.
- (5) "other personnel permitted by state laws, regulations and policies" mainly includes:
 - (i) retired scientific and technical personnel;
 - (ii) scientific and technical personnel who are on leave without pay;
 - (iii) retired personnel from enterprises and institutions; and
 - (iv) retired personnel from party and state offices and

associations, in conformity with state stipulations.

Article 4

"Two persons" in partnership enterprises or limited liability companies as provided in Articles 8 and 9 of the Regulations means two investor principals with independent assets.

Article 5

Trades that private enterprises may engage in as provided in Article 12 of the Regulations shall also include cultural, artistic, tourist, sports, foodstuffs, medicines, breeding and other trades of a profit-seeking nature.

Private enterprises may take one trade as the principal one and operate other trades concurrently.

Article 6

Private enterprises may establish branch factories, stores or companies and so forth, and the investors may establish enterprises in other places.

Article 7

Limited liability companies shall register in accordance with the provisions of the "Regulations of the People's Republic of China Concerning the Administration of Legal Person Registration."

Article 8

The administration for industry and commerce authorities shall be the authorities in charge of private enterprise registration.

Article 9

Whenever persons apply to establish private enterprises in conformity with the provisions of Article 11 of the Regulations, the applicant shall submit to the administration for industry and commerce authorities handling registration the relevant documents:

- (1) The identification papers of the applicant.

In the case of a sole proprietorship enterprise, "applicant" means the investor himself, in the case of a partnership enterprise it means the responsible person as chosen by the partners, and in the case of a limited liability company it means the responsible person of the enterprise as chosen by the investors.

When partnership enterprises and limited liability companies apply to register, they shall also provide the identification papers of the other partners or investors as well as of the applicant.

- (2) Proof of site use.
- (3) A capital verification certificate.

The amount of registered capital of limited liability companies shall be implemented in accordance with the provisions on the amount of registered capital of enterprise legal persons.

- (4) Private enterprises applying to engage in production and operations in the extraction of natural resources, architectural design, construction, communications and transportation, production of foodstuffs or medicine, printing, hotels, foreign trade, manufacturing of measuring instruments and other trades shall submit approval documents from the departments concerned in accordance with the relevant state stipulations.
- (5) When partnership enterprises apply to register, they shall provide the written partnership agreement.

The written partnership agreement shall state clearly the form of the partners' investment, the amount of their investment, [provisions on] distribution of profits, liability for debts, joining, withdrawal from and dissolution of the partnership, and other matters.

- (6) When limited liability companies apply to register they shall provide the company articles of association, and the contents of the articles of association shall conform to the provisions of Article 14 of the Regulations.

Article 10

In applying to establish a private enterprise, the applicant shall register with the administration for industry and commerce authorities in the county, city or district where the enterprise is located, and after approval and the issuance of a business license it may begin to do business.

If a private enterprise applies to establish a branch factory, store or company, it shall register with the county-level administration for industry and commerce authorities where the branch factory, store or company is located, and after approval and the issuance of a business license it may begin to do business.

If there are more than thirty investors in a limited liability company, it shall be approved by the administration for industry and

commerce at the district or city-level and above.

Article 11

The principal items for private enterprise registration shall include the name, responsible person of the enterprise, business address, amount of capital, scope of business, mode of operations, type of enterprise, number of employees, the names of the partners in a partnership enterprise, the names of the investors in a limited liability company, and so forth.

Names of private enterprises shall be handled in accordance with the provisions on the administration of name registrations for industrial and commercial enterprises.

“Responsible person of the enterprise”: in a sole proprietorship it refers to the investor; in a partnership it refers to the responsible person, as determined by the partners; and in a limited liability company it refers to the legal representative. The name of the responsible person of the enterprise must correspond to his identity card and he may not use a different name.

“Business address” refers to the city, county (district), township (town), village, street, house number, and so forth.

“Amount of capital” includes the fixed capital and floating capital of the enterprise.

“Scope of business” refers to the approved and registered production and operating projects and product categories.

“Mode of operations” refers to independent production and marketing, agency purchase and sales, processing on order, processing according to sample, assembling imported parts, retail sales, wholesale trade, combined retail and wholesale operations, passenger transportation services, freight services, storage and transportation brokerage, cargo handling, repair services, consulting services and so forth.

“Type of enterprise” refers to sole proprietorship enterprises, partnership enterprises and limited liability companies.

Article 12

The administration for industry and commerce authorities shall make an examination and reach a decision within thirty days of receiving an application. If the requirements are complied with, after approval and registration the business license shall be issued; if the requirements are not complied with, registration shall not be permitted and written notice shall be given to the applicant.

On the strength of their business license, private enterprises may have a seal engraved, open a bank account, and engage in production

and operating activities within their approved scope of business.

Article 13

If a private enterprise changes its name, the responsible person of the enterprise, business address, scope of business, mode of operations, type of enterprise or other principal items of registration, it shall amend its registration with the original authorities in charge of registration.

Article 14

An enterprise that continues as a result of private enterprise division or merger shall amend its registration; an enterprise that is newly established as a result of division or merger shall register its commencement of business; an enterprise that is terminated as a result of division or merger shall cancel its registration.

When a private enterprise is assigned, the assignor shall cancel its registration, and the assignee shall reregister.

If a private enterprise moves outside the jurisdiction of the original authorities in charge of registration, it shall apply to amend its registration. The original authorities in charge of registration shall on the basis of the application take back the business license and duplicate(s), cancel the registration number, issue documents for moving, and transfer the enterprise files to the authorities in charge of registration where the new enterprise address is located. On the strength of the moving documents the enterprise shall reapply for its name and registration number and obtain its business license from the authorities in charge of registration where its new address is located.

If a partnership enterprise increases or decreases the number of its partners, it shall amend its registration.

A limited liability company shall amend its registration in accordance with the provisions of the "Regulations of the People's Republic of China Concerning the Administration of Legal Person Registration."

Article 15

When a private enterprise amends its registration, it shall submit a written application and the relevant certificates; applications by a partnership enterprise shall be signed by the partners, and applications by a limited liability company shall be signed by the directors.

Article 16

The administration for industry and commerce authorities shall make an examination and reach a decision within fifteen days of

receiving a private enterprise application for amendment.

Article 17

In accordance with the provisions of Article 17 of the Regulations, when a private enterprise goes out of business it shall submit an application to the original authorities in charge of registration, and it shall also submit capital liquidation and settlement documents, a debt clearance certificate and a tax payment certificate; after obtaining approval it shall have its business license and duplicate(s) and its seal collected, and it shall also notify the bank where it opened an account.

When a partnership enterprise goes out of business it shall submit a written application to go out of business from the partners. When a limited liability company goes out of business, it shall submit the resolution of the board of directors or other relevant documents.

Article 18

In accordance with the provisions of Article 18 of the Regulations, when a private enterprise goes bankrupt it shall submit bankruptcy documents, a capital liquidation certificate and a debt clearance certificate to the original authorities in charge of registration; upon obtaining approval, it shall carry out the procedures for cancelling its registration.

Article 19

A private enterprise that terminates its operations as a result of administrative sanctions or a court judgment shall carry out the procedures for cancelling its registration with the original authorities in charge of registration.

Article 20

If a private enterprise loses its business license it shall report the loss to the original authorities in charge of registration and shall also apply for a replacement.

Article 21

If private enterprises conduct Sino-foreign equity joint ventures or Sino-foreign cooperative joint ventures with foreign companies, enterprises and other economic organizations or individuals, they must register in accordance with the relevant provisions of the "Regulations of the People's Republic of China Concerning the Administration of Legal Person Registration."

Article 22

If private enterprises apply to contract to process on order or according to sample, to assemble imported parts or to engage in compensation trade, they shall sign contracts with the foreign businesses in accordance with state stipulations, and having been examined and approved by the departments concerned, they shall report to the administration of industry and commerce authorities at the county level and above for approval.

Article 23

If private enterprises conduct equity joint ventures or cooperative joint ventures with Hong Kong, Macao or Taiwan companies, enterprises and other economic organizations or individuals, or contract to process on order or according to sample, to assemble imported parts or to engage in compensation trade from those regions, they may do so in accordance with the provisions of Articles 21 and 22 of these Measures and of state stipulations.

Article 24

When use of a business site for a private enterprise has been approved, no unit or individual may seize it. If it is necessary to demolish or remove it, the unit or individual demolishing or removing it shall in accordance with relevant stipulations be responsible for the expenses of demolition and removal and shall also make reasonable arrangements for an address to move to. If economic loss is caused as a result of the seizure, the seizing unit and the person in charge shall be responsible for paying compensation.

Article 25

If a private enterprise commences business, is divided, merged, assigned, moves or goes out of business, it shall in all cases complete tax registration or cancel its tax registration with the tax authorities within thirty days of registering commencement of business, amending its registration, reregistering or cancelling its registration.

Article 26

In accordance with the provisions of Article 35 of the Regulations, private enterprises shall strengthen their financial and accounting systems and strictly implement financial administration stipulations; they shall not report their income deceptively or arbitrarily apportion costs and expenses.

Article 27

Private enterprises shall not withdraw enterprise capital, transfer assets, conceal property or evade debts.

Article 28

Foreign exchange income and expenditures of private enterprises shall be implemented in accordance with the relevant state stipulations on the administration of foreign exchange.

Article 29

In accordance with Article 40 of the Regulations the administration for industry and commerce authorities shall perform the following administrative duties with respect to private enterprises:

- (1) handling registration on the commencement of business, amended registration, reregistration and cancellation of registration;
- (2) supervising private enterprises to engage in production and operating activities in accordance with the registered items and approved scope of business;
- (3) curbing and investigating unlawful business activities of private enterprises;
- (4) protecting the lawful operations of private enterprises and curbing exactions on private enterprises;
- (5) guiding the work of private enterprise associations; and
- (6) other administrative responsibilities vested by the state.

“All responsible departments concerned with trade and industry” that Article 40 of the Regulations provides shall carry out professional leadership, assistance and supervision over private enterprises refers to trade, mineral resources, construction, communications and transportation, commerce, energy and other departments.

Article 30

Private enterprises shall in the first quarter of each year file with the original authorities in charge of registration an annual inspection report on the previous year's production and operations, and a capital balance sheet or table of assets and liabilities; the form of the annual inspection report shall be uniformly formulated by the State Administration for Industry and Commerce.

Article 31

Private enterprises shall pay an administration fee in accordance with stipulations. The standard for charging administration fees shall

temporarily be implemented with reference to the standard for charging administration fees for individual industrial and commercial households, but the maximum amount charged per month shall not exceed 1,000 *yuan*.

Article 32

In accordance with the provisions of Article 41 of the Regulations, the administration for industry and commerce authorities shall impose penalties for illegal activities of private enterprises as provided below:

- (1) in cases of unauthorized commencement of business without approval and registration, suppression [of the activities] shall be imposed, the illegal gains shall be confiscated and a fine of not more than 2,000 *yuan* shall be imposed;
- (2) in cases of concealing the true circumstances or engaging in fraud during registration, a fine of not more than 1,000 *yuan* shall be imposed;
- (3) in cases of engaging in production and operating activities that exceed the approved and registered scope, the illegal gains shall be confiscated and a fine of not more than 500 *yuan* shall be imposed; if the circumstances are serious, there shall be an order of closure and suspension of business;
- (4) in cases of failing to amend registration, reregister or cancel registration in accordance with stipulations, a fine of not more than 500 *yuan* shall be imposed;
- (5) in cases of leasing, assigning or selling a business license, the illegal gains shall be confiscated, a fine of not more than 3,000 *yuan* shall be imposed and the business license shall be revoked;
- (6) in cases of obtaining a business license by fraud, there shall be an order to cease business activities, the illegal gains shall be confiscated, a fine of not more than 3,000 *yuan* shall be imposed and the business license shall be revoked;
- (7) in cases of forging a business license, there shall be an order to cease business activities, the false business license and the illegal gains shall be confiscated and a fine of not more than 5,000 *yuan* shall be imposed;
- (8) in cases of altering a business license, the illegal gains shall be confiscated and a fine of not more than 2,000 *yuan* shall be imposed; if the circumstances are serious the business license shall be revoked;
- (9) in cases of refusal to complete the annual inspection procedures, a fine of not more than 500 *yuan* shall be imposed

and there shall be an order to make up the annual inspection procedures; and

- (10) in cases of engaging in speculation, penalties shall be imposed in accordance with the "Provisional Regulations Concerning Administrative Sanctions for Speculation and Profiteering" and other relevant stipulations.

Penalties for limited liability companies shall be implemented in accordance with the provisions of the "Regulations of the People's Republic of China Concerning the Administration of Legal Person Registration."

Penalties involving a fine or confiscation of not less than 200 *yuan* or revocation of the business license shall be examined and approved by the director of the administration of industry and commerce bureau at the county level or above.

Article 33

If personnel employed in a private enterprise obstruct or resist administrative personnel carrying out their public duties in accordance with law, they shall be given a warning; if the circumstances are serious, they shall be given penalties by the public security authorities in accordance with the provisions of the "Security Administration Punishment Regulations of the People's Republic of China"; if it constitutes a crime, they shall be pursued for criminal liability by the judicial authorities in accordance with law.

Article 34

If private enterprises violate financial or taxation administration stipulations, they shall be punished in accordance with the financial or taxation administration stipulations.

Article 35

If private enterprises, in violation of labor administration stipulations, infringe the lawful rights of staff and workers, they shall be given penalties in accordance with the relevant labor administration stipulations.

Article 36

Private enterprise associations established in accordance with the provisions of Article 5 of the Regulations are social groups formed through the federation of private enterprises. Private enterprise associations may have group members or individual members.

The establishment of private enterprise associations shall have the consent of the administration for industry and commerce authorities at the corresponding level and they shall register as social groups in accordance with relevant stipulations.

Private enterprise associations at all levels shall accept the guidance of the administration for industry and commerce authorities at the corresponding level.

Article 37

Private enterprise staff and workers shall establish trade union organizations and shall carry them out in accordance with relevant stipulations of the All-China Federation of Trade Unions.

Article 38

Private enterprise labor administration shall be implemented in accordance with the relevant stipulations.

Article 39

These Implementing Measures shall go into effect on February 1, 1989].